

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 21-04

Date Received: 19 Aug 20

Title: Service Contract Act (SCA) to Service Contract Labor Standards (SLCS) - Guidance

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Policy and Guidance: (check all that apply)

- ☐ Policy
- ☒ Procurement Guidance
- ☐ Real Estate Guidance
- ☐ Other Guidance
- ☐ Non-AMS Changes

Summary of Change:

Change references to Service Contract Act to Service Contract Labor Standards, also administrative change from wdol.gov to beta.SAM.gov for access to existing wage determinations.

Reason for Change:

The change is in response to the change made in the US Code - 41 USC Chapter 67 was changed from Service Contract Act to Service Contract Labor Standards, also administrative update of URL.

Development, Review, and Concurrence:

Cost and Price Analysis Services and Acquisition Policy

Target Audience:

Acquisition Workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.2.2.5, T3.2.2.7, T3.2.3, T3.2.4, T3.2.6, T3.6.2, T3.8.2, T3.8.7, and T3.10.1

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links:

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.5.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.7.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.3.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.4.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.6.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.6.2.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.2.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.7.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.1.pdf>

Attachments:

Redline and final documents.

Other Files:

N/A.

Redline(s):

Sections Revised:

3.2.2.5 A 1 – Simplified Purchasing

3.2.2.5 A 3 – Blanket Purchase Agreement (BPA)

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.2.2.5 – Commercial and/or Simplified Purchase Method Revised 1/2016

A Simplified Purchasing

1 Simplified Purchasing Revised ~~9/2020~~ 10/2020

2 Purchase Orders Revised 9/2020

3 Blanket Purchase Agreement (BPA) Revised ~~9/2020~~ 10/2020

4 Prohibited and Restricted Purchases Revised 9/2020

5 FAA Sponsored Conferences, Seminars, Ceremonies, and
Workshops Revised 9/2020

B Clauses

C Forms

T3.2.2.5 – Commercial and/or Simplified Purchase Method Revised 1/2016

A Simplified Purchasing

1 Simplified Purchasing Revised 9/2020 10/2020

a. *Scope of Simplified Purchasing.* Simplified purchasing covers methods used to obtain noncomplex products or services through a contract, purchase order, blanket purchase agreement, and Federal Supply Schedule order. For purpose of AMS Guidance T3.2.2.5, the term “services” also includes real property related services such as appraisals, titles, surveys, and renting of portable or short term storage units. Simplified purchase methods apply to noncomplex products or services that have been sold at established catalog or market prices or where prices can be determined fair and reasonable (see AMS Policy 3.2.2.5).

b. *Simplified Purchasing vs. Complex Source Selection.* The complexity of FAA’s requirement shapes the complexity of the process to solicit, evaluate, and select a vendor. Contracting methods described in AMS Policy 3.2.2.3, Complex Source Selection, are generally not a time and/or cost efficient means for acquiring noncomplex products or services. There are exceptions to this consideration, such as when the procurement involves cost-reimbursement pricing or indefinite-delivery arrangements-- both noncomplex and complex work is required, in- depth evaluation is needed to select the best qualified vendor, or extensive contract terms and conditions are necessary.

c. Authorized users of the FAA purchase card must use methods described in T3.2.6 when procuring items; however, Contracting Officers (CO) or others delegated procurement authority outside of the purchase card program may determine, based on the factors surrounding each procurement, which purchasing method is appropriate, Simplified Purchase Method or Complex Source Selection.

d. *Micro-Purchase Threshold.*

(1) Simplified purchases with a total estimated potential value (TEPV) under the applicable micro-purchase threshold must be performed using the purchase card.

(2) The micro-purchase thresholds are:

(a) \$10,000 for commercial supplies;

(b) \$10,000 for construction (Note: Above \$10,000 may not be done as a simplified purchase); and

(c) \$10,000 for services.

(3) Procurement requests under the micro-purchase threshold must not be submitted for award under a contract unless approved by the cognizant procurement office.

e. *Funding*. All applicable funding requirements detailed in AMS Procurement Guidance T3.3.1 apply to procurement conducted using simplified methods. These include:

- (1) Compliance with the Anti-Deficiency Act;
- (2) Ensuring sufficient funds are available;
- (3) Ensuring awards made subject to the availability of funds include the appropriate AMS Clauses (i.e., AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year); and
- (4) Ensuring that severable services crossing fiscal years are awarded using appropriate funds, and that the contract period does not exceed one year.

f. *Mandatory Sources and Other Requirements*. When using simplified purchase methods, COs or others with procurement authority (to include purchase card holders) must consider the following requirements:

- (1) *Strategic Sourcing Initiatives*. This includes the following:
 - (a) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES). The SAVES program is a mandatory source for some equipment and office supplies (see AMS Procurement Guidance T3.8.6).
 - (b) Enterprise software licensing agreements such as Oracle.
- (2) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR)*. For those products available through FPI, the procedures detailed in AMS Procurement Guidance T3.8.4, Government Sources of Products/Services, must be strictly followed.
- (3) *Randolph-Sheppard Act*. FAA must first consider the blind in the operation of vending facilities. (See AMS Procurement Guidance T3.8.4)
- (4) *Javits-Wagner-O'Day Act (JWOD)*. FAA must first consider items and services available through the AbilityOne Program (formerly JWOD) before going to other sources. (See AMS Procurement Guidance T3.8.4)
- (5) *General Services Administration (GSA) Federal Supply Schedules (FSS)*. When procuring items through a GSA FSS, FAA must follow the procedures detailed under AMS Procurement Guidance T3.8.3, Federal Supply Schedules. Note that GSA is not a mandatory source for FAA.
- (6) *Section 508 Requirements*. FAA must procure products and services that comply with federal requirements for Section 508 of the Rehabilitation Act. (See AMS Procurement Guidance T3.2.2.3.B.4)

(7) *Environmental Requirements.* FAA should acquire environmentally preferable, energy and water efficient, and recycled content products and services when possible. (See AMS Procurement Guidance T3.6.3 for additional information)

(8) *Labor Laws.* Depending on the nature of the requirement, FAA must comply with applicable labor laws when conducting procurements (i.e. the Service Contract ~~Aet~~Labor Standards for applicable services over \$10,000, and the Walsh-Healey Public Contracts Act for materials, supplies, articles, or equipment exceeding \$15,000). (See AMS Procurement Guidance T3.6.2 for additional information)

g. *Set-asides.* Purchases for products or services with the exception of real property related services with an anticipated value between \$10,000 and \$150,000, except those conducted using a purchase card, are automatically reserved for competition among SEDB (8(a)) vendors, unless the purchaser, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining quotes or offers from responsible SEDB 8(a) concerns that are competitive in terms of market prices, quality, and delivery. More information on set-asides, to include SEDB 8(a) and others, is available in AMS Procurement Guidance T3.6.1.

h. *Competition.*

(1) *Over \$10,000.* Purchases over \$10,000 must be competed among two or more qualified vendors, unless the proposed action is supported by a single source justification or is set-aside under a small business preference program authorizing noncompetitive awards.

(2) *\$10,000 and under.* Competition is encouraged, but not mandatory for purchases \$10,000 and under. Purchasers should consider the administrative cost of the purchase versus potential savings that could result from competition. Purchases \$10,000 and under on a single source basis do not require file documentation justifying the single source decision. However, purchasers should use sound business judgment and have a documented reasonable basis for any decisions involving purchases.

(3) Purchasers may obtain competition by reviewing commercial catalog/price lists, or by soliciting quotes informally by telephone, email, or fax, or formally through written or electronic methods of request for quotation or offer.

i. *Solicitation.*

(1) *Request for Quotation.* A request for quotations (RFQ) may be used to obtain information on prices and availability of products and services. An RFQ is generally used when the purchaser expects to place an order, but does not wish to bind the vendor at the time the quotation is received. All of the terms and conditions to be included in any purchase that may result from the RFQ are to be included in the RFQ. An RFQ may be either written or oral.

(2) *Request/Solicitation for Offer.* A request/solicitation for offer (RFO/SFO) is appropriate when the purchaser needs some amount of discussion to clearly communicate needs and to

understand products and services being offered. The purchaser should discuss all aspects of the RFO/SFO, including quality, warranty, payment and other significant aspects included in a written RFO/SFO. An RFO/SFO may be used when non-price-related information and evaluation is necessary.

j. *Discounts.* Quantity discounts are usually offered for purchasing a specific quantity or dollar value of items at one time, or a specified dollar total over an agreed-upon time period. A trade discount from the catalog/commercial list price is one that is offered to all customers by a vendor. This may include promotion of seasonal, new or slow-selling items or special discounts offered by a manufacturer or dealer. A prompt payment discount is one that is offered by a vendor for payment by the Government before the date payment is due. Such discounts are not considered in the evaluation of quotes or offers, but any discount offered is included in the award. The purchaser should seek discounts when appropriate.

k. *Competition- Evaluation and Basis for Award.*

(1) Purchasers must consider all timely and responsive quotations or offers received. Individual RFQs/RFOs must define the requirements for timeliness and responsiveness.

(2) Requirements solicited on an all-or-none basis specify that prospective vendors must furnish all of the requested items to be considered for award. If vendors are informed in the request for quotation or offer, the purchaser may consider the lowest cost alternative between a single award and multiple awards based on the prices for each item and the administrative costs of making multiple awards.

(3) An award is made to the responsive and responsible vendor offering the best value to FAA. Purchasers may evaluate vendors on the basis of lowest priced, technically acceptable offer or quote, which will result in the best value to FAA.

(4) Non-price related evaluation factors, such as past performance, quality of product/space/land offered, vendor qualifications, delivery terms or warranties, may also be evaluated but must be communicated to vendors.

l. *Price Reasonableness.*

(1) *Purchases of \$10,000 or less.* Purchasers do not need to document price analysis for purchases when they find no justifiable reason to question that the price is fair and reasonable. The administrative cost of verifying price reasonableness of purchases may more than offset potential savings from detecting instances of overpricing. When there are doubts about the reasonableness of the price, the purchaser should obtain additional quotes or take other action to verify price reasonableness, such as reviewing current published price lists, reviewing historical prices for purchases of the same or similar item or service, or requesting data from the vendor on sales prices to other customers.

(2) *Purchases Over \$10,000.* Procurements over \$10,000 must be supported by a written determination by the purchaser that the price is fair and reasonable. When possible, this determination is based on competition. When awards are made without competition or when only a single responsive quote or offer is received, the purchaser must use other price analysis techniques to determine if the price is reasonable. Price analysis techniques that the purchaser may consider, along with the independent Government cost estimate, include:

- (a) Comparison of prior pricing for the same or similar items or services in comparable quantities;
- (b) Application of rough yardsticks (e.g. dollars per pound or horsepower) to highlight significant inconsistencies that warrant additional pricing inquiry;
- (c) Comparison with current published catalog or market prices, similar indexes, or discount or rebate arrangements;
- (d) Ascertaining that law or regulation establishes pricing; and
- (e) Other information gained through a market survey for similar products or services. (See AMS Guidance T3.2.1.2 Market Analysis for additional information on market surveys).

m. *Documenting the Award Decision.* Purchasers should have a rational basis for purchasing decisions. The extent of documentation substantiating purchase decisions depends on the value and circumstances of the purchase. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A.4, Prohibited and Restricted Purchases), then the award decision must, despite the dollar value of the purchase, document the basis and background for the purchase.

(1) *Purchases of \$10,000 or less.* Documentation is not required except for awards that, without documentation, would appear questionable to a “reasonable person” with market knowledge of the products or services being purchased.

(2) *Purchases over \$10,000.* The purchaser must record prices received, names of vendors contacted, and discounts, and other terms quoted by each vendor. If competitive quotes or offers were solicited and award was made to other than the lowest priced, technically acceptable vendor, the purchaser must document evaluation criteria and results, and basis for the award decision.

n. *Rotating Awards for Requirements of \$10,000 or less.* When possible and economically feasible, purchasers should distribute simplified purchase awards of widely available products and services among vendors.

o. *Requisitioner Role.*

(1) The requisitioner defines the requirement by supplying applicable information or documentation to the purchaser that includes, but is not limited to, the following:

- (a) Part numbers;
- (b) Item descriptions;
- (c) Statements of work and specifications;
- (d) Packaging and shipment requirements;
- (e) Inspection and acceptance requirements;
- (f) Funding and any required approvals; and
- (g) Suggested vendors.

(2) As necessary, the requisitioner may assist the purchaser with evaluation of offered products and services.

(3) As part of market research, requisitioners may contact potential vendors about product or services offered, pricing, quality, warranty, delivery terms, and other information. Requisitioners should clearly communicate to prospective vendors that the contact is for market research purposes only and is not a commitment to purchase.

p. Inspection and Acceptance.

(1) Acceptance by a FAA representative constitutes acknowledgement that the supplies or services received conform to applicable contract or purchase requirements. Acceptance is documented using an inspection and acceptance form such as FAA Form 256, by a commercial shipping document or packing list, or through other means to include annotation on the purchase order form, or payment of valid invoice.

(2) Acceptance of the supplies or services is the responsibility of the CO or cardholder. This responsibility may be assigned to a program office or center representative.

(3) Each award must specify the place of acceptance as well as other necessary acceptance provisions.

2 Purchase Orders Revised 9/2020

a. *Purchase order.* A purchase order is a simplified form for ordering supplies or services, generally issued on a fixed-price basis, at stated prices based upon specified terms and conditions. Purchase orders must specify the quantity of supplies or scope of services being ordered and contain a date by which the goods or services must be delivered to FAA.

b. *Unpriced purchase orders.* An unpriced purchase order is an order for supplies or services that does not have a price established at the time of its issuance.

(1) An unpriced purchase order may be appropriate when:

(a) It is impractical to obtain pricing in advance of issuance of the purchase order; or

(b) The purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs; the material is available from only one source and for which cost cannot be readily established; or the order is for supplies or services for which prices are known to be competitive but exact prices are not known (e.g. miscellaneous repair parts, maintenance agreements).

(2) Unpriced purchase orders may be issued by using written purchase orders or through various electronic means. A realistic monetary limitation, either for each line item or for the total order, should be placed on each unpriced purchase order. The monetary limitation becomes an obligation subject to adjustment when the firm price is established. The contracting office should follow-up each order to ensure timely pricing. The Contracting Officer (CO) or designated representative should review the invoice price and, if reasonable, process the invoice for payment.

c. *Content.* Purchase orders should contain the following information:

(1) Trade and prompt payment discounts that are offered;

(2) The quantity of supplies or services ordered;

(3) Inspection provisions; origin or destination;

(4) A determinable date by which delivery of supplies or performance of services is required; and

(5) Information should be requested by the preparer of the purchase order as follows:

(a) Vendor's SSN or taxpayer identification number (TIN);

(b) Vendor's business status as one of the following classifications:

(i) Individual/sole proprietorship;

(ii) Corporation;

(iii) Partnership; or

(iv) Other (specify);

(6) The CO's signature. Electronic signatures may be used in the production of purchase orders by automated methods (see AMS Policy 3.1.9).

d. *Clauses*. The CO may print on the purchase order form, or include as an attachment, the clauses they consider to be generally suitable for their purchases. The following forms may be used for purchase orders:

(1) Optional form 347, Order for Supplies or Services;

(2) Optional form 348, Order for Supplies or Services Schedule-Continuation; or

(3) Other agency generated or contractor provided forms.

e. *Procedure*. Procurement under a purchase order valued over \$10,000 must be competed among 2 or more qualified vendors, unless the action is supported by a single source justification (AMS Procurement Guidance T3.2.2.4) or conducted under a small business preference program authorizing noncompetitive awards (AMS Procurement Guidance T3.6.1).

(1) *Competitive Awards*.

(a) Before issuing a request for quotations (RFQ), the CO should develop a listing of potential sources based on the requirement. This list can be derived from sources to include, but not limited to:

(i) Previous vendors utilized in FAA or source lists kept in the contracting offices;

(ii) Qualified vendor lists;

(iii) The requiring or program office;

(iv) System for Award Management (SAM); and

(v) The Office of Small Business Development.

(b) All procurements over \$150,000 must be publicly announced on beta.SAM.gov Contract Opportunities website or through other means. This requirement does not apply to emergency actions, purchases from an established QVL, exercise of options, or modifications within the scope of a purchase order.

(c) Once a list of potential sources is available, the CO should solicit as many sources as practicable, but must solicit quotations from at least two or more sources.

A listing of the vendors to whom the RFQ was distributed, as well as any responses or quotes, must be included in the official file.

(d) Prior to award of the purchase order, the CO must confirm that the vendor is not listed in the "Exclusions" portion of the "Performance Information" capability of SAM and has successfully registered in SAM. The CO should document this process in the file, which may include simply printing the results from each search or including a statement of the checks being completed in a memo to file.

(e) *Vendor Selection.* Once a qualified and responsible vendor is selected, the CO must support the decision with a written determination that the price is fair and reasonable and that the award is in the best interest of FAA. This determination must be included in the official file.

(f) *Price Analysis/Reasonableness.* See AMS Procurement Guidance T3.2.3.A.1.

(2) *Single source awards.*

(a) The rational basis for a single source decision must be documented by the program official, reviewed by legal counsel, and approved by the CO and included in the official file.

(b) There are no predetermined or prescribed conditions for using a single source, and each single source decision stands alone and must be based on the circumstances surrounding each specific need.

(c) Single source procurements over \$10,000 (excluding emergencies) require market analysis to verify that FAA's technical and business interests are best met through a single source.

(d) A single source justification is not required for noncompetitive set-asides to 8(a)-certified Socially and Economically Disadvantaged Business (SEDB) or Service Disabled Veteran Owned Small Business (SDVOSB). (See AMS Procurement Guidance T3.6.1 "Small Business Development Program"). A single-source justification is also not required for procurements conducted in accordance with the Javits-Wagner-O'Day Act (Ability/One Program) or the Randolph-Sheppard Act as specified in AMS Guidance T3.8.4.

(e) A single source justification is not required for a site-specific requirement for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA; or for operational facilities that house equipment and/or personnel that provide Air Traffic Control services to aircraft operating in the NAS. The head of the Technical Operations service organization, or designee, will provide an annual determination identifying equipment and facilities subject to this subsection.

(f) When the total estimated value is over \$150,000, the CO must issue a pre- award public announcement (excluding emergencies) summarizing the basis for the single source decision.

(g) Additional information regarding single source awards can be found in AMS Procurement Guidance T3.2.2.4.

f. Acceptance.

(1) A quotation resulting from a RFQ is not an offer, and cannot be accepted by FAA to form a binding contract. A contract is formed when the supplier accepts the offer, which can be done by:

(a) The supplier accepting the purchase order in writing to FAA. The Contracting Officer should require written acceptance of a purchase order when it is desired to consummate a binding contract before the contractor undertakes performance; or

(b) The supplier furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

g. Modification. Each purchase order modification should identify the order it modifies, contain an appropriate modification number, and identify what authority is being used to modify the order. The Contracting Officer determines when it is necessary to obtain a contractor's written acceptance of a purchase order modification. Purchase orders may be modified by using:

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an automated format; or

(3) A purchase order form.

h. Termination. A purchase order may be terminated, and the process to terminate an order depends on whether the order has been accepted.

(1) If the purchase order has been accepted in writing by the contractor, the termination should be processed in accordance with AMS termination clauses.

(2) If the purchase order has not been accepted in writing by the contractor, the CO should notify the contractor in writing that the purchase order has been canceled and request the contractor's acceptance of the cancellation. If the contractor:

(i) Accepts the cancellation and does not claim that costs were incurred, no further action is required.

(ii) Does not accept the cancellation or claims that costs were incurred, the CO

should process the termination in accordance with the termination clauses.

(1) Any purchase order with an anticipated value of \$10,000 or more must include a Purchase Order/GSA/FSS Order File Checklist (see Procurement Forms) in the official file.

(2) The CO may choose to use the Simplified Purchase Summary (see Procurement Forms) to document actions associated with the award of a purchase order.

3 Blanket Purchase Agreement (BPA) Revised 9/2020 10/2020

a. A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for products or services by establishing "charge accounts" with qualified vendors. BPAs may be appropriate when other procurement vehicles such as using a purchase card, purchase order, or contract are not appropriate or available, and:

(1) A wide variety of items in a class of supplies or services are required, but the exact items, quantity, and delivery requirements are not known in advance and vary;

(2) FAA offices in given areas do not have or need purchasing authority, but need a commercial source for supplies or services;

(3) Establishing a BPA would avoid writing numerous purchase orders;

(4) There is no existing source for the same supply or service that FAA must use; these sources include:

(a) Federal Prison Industries, Inc. (UNICOR);

(b) Randolph-Sheppard Act or Javits-Wagner-O'Day Act (JWOD) programs;

(c) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program;

(d) National Wireless program; and

(e) Active contracts containing the "Requirements" clause.

b. A BPA is not a contract. Instead, it is an understanding between FAA and a vendor that allows FAA to place future orders more quickly by identifying terms and conditions applying to those orders, a description of the supplies or services to be provided, and methods for issuing and pricing each order. The FAA is not obligated to place, nor must a vendor accept, any orders. Either party may cancel a BPA at any time. An enforceable contract exists only when FAA places an order against the BPA and it is accepted by the vendor.

c. *Establishing a BPA.*

- (1) After determining a BPA would be advantageous, the Contracting Officer (CO) may concurrently establish BPAs for the same type of items or services with more than one vendor to provide maximum competition for orders.
- (2) There is no maximum dollar limitation for a BPA; however, each BPA must have a total ceiling amount. If the anticipated total value of all orders against a BPA will exceed \$150,000, then it is subject to public announcement and applicable review requirements, including review by legal counsel for orders exceeding \$100,000 (as well as review by the Chief Financial Officer (CFO) (see AMS Procurement Guidance T3.2.1.4 for applicable standards) and Chief Information Officer (CIO) (See AMS Guidance T3.2.1.A.3) if information technology resources over \$250,000 are involved)).
- (3) Only a CO can place an individual order exceeding \$100,000.
- (4) Using a BPA does not relieve the CO or authorized users from keeping obligations and expenditures within available funds.
- (5) Price reasonableness and competition requirements apply to obtaining needs through BPAs. A BPA with one vendor does not justify purchasing from only one source; the initial BPA and future orders awarded under the BPA are subject to competition requirements. (Refer to AMS Procurement Guidance T3.2.2.4, Single Source).
- (6) BPAs may include Federal Supply Schedule (FSS) contractors utilizing the BPA provision in their FSS contract.
- (7) BPAs can be prepared without a Procurement Request (PR), but only after contacting vendors to arrange for maximum discounts, documentation requirements for individual purchases, periodic billings, and other necessary details.
- (8) Open market purchases are not affected by an existing BPA. The same class of supplies or services offered through a BPA may be purchased on the open market, and both BPA and non-BPA vendors may be solicited.

d. *Mandatory Terms and Conditions.* A BPA must include:

- (1) *Description of Agreement.* A statement that the vendor will furnish products or services, described in general terms, if and when requested by the CO, or the authorized representative, during a specified period and within a stipulated aggregate amount.
- (2) *Extent of Obligation.* A statement that the FAA is obligated only to the extent of authorized orders actually placed under the BPA.
- (3) *Purchase Limitation.* A statement specifying the dollar limitation for individual orders under the BPA.

(4) *Notice of Individuals Authorized to Purchase under the BPA.* The CO will furnish to the vendor a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual.

(5) *Clauses.* The BPA must include any prescribed clauses applicable to the dollar thresholds of particular orders against the BPA, e.g., Service Contract ~~Aet~~Labor Standards for orders for services over \$10,000.

(6) *Delivery Tickets.* A requirement that all shipments under the BPA, except subscriptions and other charges for newspapers, magazines, or other periodicals, will be accompanied by delivery tickets or sales slips with the following information as a minimum: name of individual who placed the order, name of contractor, BPA number, date of purchase, purchase number, itemized list of products or services furnished, quantity, unit price and extension of each item, and date of delivery or shipment.

(7) *Invoices.* Invoices are to be submitted at least monthly or upon expiration of the BPA for all deliveries made during the billing period. Each invoice must:

- (a) Identify the delivery tickets covered in the invoice;
- (b) State the total dollar value of each delivery ticket; and
- (c) Be supported by receipt copies of each delivery ticket.

e. *Procurement Request (PR).* A PR is not required for each order. Instead, the BPA can be bulk funded to the ceiling on the first order, and then each subsequent order applied to the BPA until funds are no longer available. Rather than obtaining a PR for each order, bulk funding is a process where the CO receives authorization through a PR to obligate funds against a specified lump sum of funds reserved for a specific purpose for a specified period of time. The amount of bulk funding should represent the anticipated need through the BPA, and not serve as means to avoid fiscal restrictions or appropriation law. The CO, or authorized BPA user, may make purchases based on an oral request or a memorandum from an authorized requisitioner in the program/requisitioning office. The program/requisitioning office should confirm oral requests in writing as a matter of record.

f. *Authorized Users.* Each person authorized to place orders against a BPA should receive written guidance from the CO on the limitations of authority and responsibilities associated with using the BPA. Authorized users must follow ordering procedures to ensure proper delivery, billing, and payment. Purchases that would normally be made as single order should not be split to avoid any user ordering limitations. Program/requisitioning offices should notify the CO whenever an authorized user changes or the need for purchasing against the BPA no longer exists; the CO should modify the BPA to reflect any changes in authorized users.

g. *Placing an Order.*

(1) When placing an order, the authorized user contacts the vendor and provides:

- (a) Authorized user's name, phone number, and office.
- (b) BPA number and order number assigned by the authorized user.
- (c) Description of required supply or service (part number, description, quantity, etc.).
- (d) Delivery address and telephone number.
- (e) Delivery date.
- (f) Reminder that the order is tax exempt.

(2) The authorized user should request any offered discounts, and inform the vendor that the BPA number and order number is to appear on the packing slip and invoice/billing statement.

(3) The authorized user should document the order in a log or by other means to record details of the transaction (item description, price, quantity, date, etc.).

h. *Segregation of Duties*. In accordance with Office of Management and Budget (OMB) Circular A-123, the same person may not make the purchase, receive supplies or services, and authorize payment. The same person may perform two of the functions, but not all three.

i. *Review*. The CO should review a sufficient random sample of BPA files at least annually to ensure that authorized users are following procedures.

j. *Unauthorized Commitments*. Only COs or people authorized by the CO may place orders against a BPA. Any purchase made by an unauthorized person, or any purchase placed against a BPA which exceeds the authorized limitation is an unauthorized commitment.

k. *Market Analysis*. The CO must maintain awareness in market conditions, sources of supply, and other factors that may warrant making new arrangements with different vendors or modifying existing arrangements.

l. *Expiration*. A BPA is considered complete when purchases under it equal its total dollar limitation or when the stated time period expires.

4 Prohibited and Restricted Purchases Revised 9/2020

a. This guidance is intended to assist FAA personnel in determining whether a particular item or service would be a permissible purchase using appropriated funds. There is no ironclad rule or readily available list that describes in every case whether a particular purchase using appropriated

funding is permissible. FAA personnel should use common sense and sound judgment, based on appropriations law and related decisions of the Comptroller General.

b. The Government Accountability Office (GAO) established a "necessary expense" doctrine. This doctrine is described fully in Volume I, Third Edition, of "Principles of Federal Appropriations Law," (GAO Red Book) issued by GAO, Office of the General Counsel. This publication states, in part, that for an expenditure to be justified under the necessary expense theory, it must meet certain tests, including: "The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available". By projection, the necessary expense doctrine does not allow use of appropriated funds to purchase items or services that can be reasonably interpreted to meet personal convenience and are not for a necessary Governmental function." (GAO Red Book, Volume I, Chapter 4, Section B.1.). The CO or purchase cardholder, consulting with budget officials and legal counsel, should make determinations with respect to the "necessary expense" doctrine about questioned or questionable items or services. Almost any listing of prohibited items of purchase is subject to exceptions. To quote the GAO Red Book "The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case-by-case basis."

c. *Prohibited and Restricted Items.* For FAA, the following are prohibited or restricted items of purchase (this is not a complete list):

(1) **Drinking water**, except when:

(a) A duly constituted public health authority pronounces ordinary drinking water to be unsafe for human consumption at the site;

(b) A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;

(c) FAA personnel reasonably foresee a disaster or emergency, such as imminent landfall of a hurricane, and all of the following conditions are present:

(i) FAA personnel reasonably anticipate that drinking water at the site will be unsafe for human consumption;

(ii) The drinking water is for FAA personnel responding to or at the emergency or disaster site;

(iii) The amount of drinking water is commensurate with the anticipated response time at the site or the estimated time for the local drinking water to be considered safe for human consumption, whichever is shorter; and

(iv) The drinking water is purchased in a reasonable time-frame in advance of an imminent emergency or disaster, and the time-frame does not exceed the time required to purchase, stage, and properly distribute the drinking water; or

(d) The drinking water is provided in a controlled environment as may be necessary to enable collections for drug use analysis for safety sensitive positions.

(2) **Food or beverage**, except as described in AMS Procurement Guidance T3.2.2.5A.5, FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops.

(3) **Gifts, gift certificates, and prepaid gift cards.**

(4) **Membership fees** for individual employees. The FAA may purchase membership in a society or association in its own name.

(5) **Subscriptions** to print or online publications or magazines not related to official duties.

(6) **Clothing** or personal apparel of any description, except:

(a) Special type clothing required by FAA. The requestor's supervisor must prepare a written justification for special type clothing and coordinate the justification with legal counsel.

(i) Clothing (such as a shirt with FAA logo) for recruitment activities such as job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources) may be authorized if it supports FAA business objectives and there is a bona fide need.

(ii) Clothing for air shows may be authorized if there is a bona fide need for FAA employees to be clearly identifiable.

(b) Clothing and equipment classified as personal protective equipment (PPE). The requestor's supervisor must prepare a written justification for PPE, but does not need coordination with legal counsel when the value of the procurement is below \$100,000. All PPE must:

(i) Have proper controls established to ensure that PPE is appropriate and accounted for; and

(ii) Be maintained and used according to standards established by the Occupational Safety and Health Administration (OSHA). See the OSHA website for more information.

(c) All clothing or PPE purchased by FAA remains the property of the Government and not the employee.

(7) **Rental of aircraft** by anyone not in an aircraft-related position.

(8) **Fans, air conditioning and cooling equipment, space heaters and heating equipment**, except as properly installed for general use in connection with the maintenance and operations requirements for the site.

(9) **Water coolers, vacuum cleaners, and other household appliances** (i.e. refrigerators, microwaves, etc.), except as requisitioned for general use by, or authorized in writing for purchase by, the authorities responsible for building maintenance and equipment.

(10) **Cellular or communication devices and services** covered by the National Wireless Program Office (NWPO). Devices provided through the NWPO include cellular phones, one and two-way pager devices, multi-functional server-based devices (e.g. Blackberries), and satellite phones.

(11) **Personalized stationery**, including paper pads, with the name, position, title, logo, or office of FAA personnel, except when:

(a) There is a clear business need approved by the head of the line of business or staff office; and

(b) The requestor notifies Office of Financial Analysis (AFA-1) of the planned purchase in advance.

(12) **Tote bags**.

(13) **Coffee mugs**.

(14) **Water bottles**.

(15) **Leather and other natural hide portfolios, binders, or planners**.

(16) **Give-away items**, including portfolio covers, flash drives, pens, and pencils, for internal or external marketing of products, services, or programs by FAA, with the following exception and conditions:

(a) Purchase of promotional items for recruitment activities, such as for job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources), may be authorized when these items support FAA business objectives and there is a bona fide need. Where there is a bona fide need, the selection of items must meet all of the following criteria:

(1) Has a practical use appropriate for the audience, and are business related items, such as pens, rulers, calculators, post-it notes, business card holders, lanyards or note pads;

(2) The items cannot be a personal use item, such as coffee cups, water bottles, umbrellas, candy or food items, or fans;

(3) Is economically priced and reasonably portable; and

(4) Avoids the perception that taxpayer dollars have been frivolously spent.

(b) Recruitment items must comply with FAA branding order 1700.6C and display the FAA jobs website (<http://www.faa.gov/jobs>).

(17) **Coins**, including but not limited to Challenge and Commemorative coins are strictly prohibited.

(18) **iPAD** and similar equipment and related services, with the following exceptions and conditions:

(a) All purchases of iPAD or similar equipment and related services must be coordinated with the Chief Information Officer's (CIO) Enterprise Program Management Service (EPMS).

(b) iPAD and similar equipment and related services for approved purchases may be procured using the FAA purchase card if the costs do not exceed established single and monthly purchase limits.

(c) LOB/SO CIOs are responsible for determining the level of acceptable security risk. As such, each LOB/SO must review the default device settings and modify accordingly to ensure the appropriate level of information assurance.

(d) Each LOB/SO must maintain an inventory of all iPAD or similar equipment.

(19) **Purchases for Non-Monetary Awards**, except:

(a) The FAA may purchase plaques, trophies, pins, flags, retirement plaques and certificates, or similar symbolic items for non-monetary awards to officially recognize employees. Items purchased for a non-monetary award must not exceed \$250 per award' including but not limited to engraving, shipping and handling. FAA Corporate Awards and Recognition program are not subject to the \$250 per award limit, but should be reasonably priced and symbolic items. All official awards must comply with HRPM, Performance Management PM- 9.2, Recognizing Employees. Requisitioning offices must maintain appropriate documentation for purchases related to non-monetary awards.

(b) To enhance an official awards ceremony, reasonable and nominally priced purchases, such as for decorations and related supplies, are permissible. An official awards ceremony is defined as publicized event that is anticipated to have an audience and the presentation of an award(s) recognizing FAA Federal employee(s). Awards presented at official awards ceremonies comply with HRP, Performance Management PM-9.2.

(c) Awards Programs are a structured process for organizations to recognize employees. All awards must be based on an act, service, accomplishment, contribution or performance that supports the LOB/SO Business Plan and/or FAA strategic priorities. Written justification is required for all awards given. The written justification varies in detail depending on the type and value of the award and must be attached to the purchase card request or Procurement Request in PRISM. For example, the written justification for informal, non-monetary awards must include: Name of the employee (or employees if it is a group award), Date, Reason for award, Type, and Cost of award. Additional information on awards ceremonies and non-monetary awards can be found in the Award Ceremonies and Non-Monetary Awards SOP. Directions for accessing the Award Ceremonies and Non-Monetary Awards SOP on the Standard Operating Procedures webpage of the Financial Services (ABA) website are as follows:

1. Go to <https://my.faa.gov/>
2. Click on the “Organizations” Tab
3. Click on “Financial Services” under “Finance and Management (AFN)”
4. Click on “Standard Operating Procedures”
5. Click on “Award Ceremonies and Non-Monetary Awards”

(20) **Business Cards**, except:

(a) The FAA may use appropriated funds to purchase business cards for employees if necessary to conduct business and approved in advance. Associate/Assistant Administrators, ATO Vice Presidents, and Regional Administrators/Center Directors determine who in their organization is authorized business cards paid for with appropriated funds to conduct FAA business. Authority for this determination may be delegated to a lower level.

(b) Business cards purchased with appropriated funds are Government property. Employees should exercise good judgment and caution when using their cards in situations not directly related to conducting FAA business.

(c) All FAA business cards must comply with branding logo and template requirements in FAA Order 1700.6C. See the FAA website for more information (FAA only)

(d) Purchasers must use one of two printing sources when using appropriated funds to purchase business cards:

(1) FAA Aeronautical Center's Media Solutions Group; or

(2) Lighthouse for the Blind, Inc., Seattle, WA (pursuant to the mandatory source requirements of the Javits-Wagner-O'Day Act). See the Lighthouse for the Blind's website for ordering information.

(21) Purchasing or Renting Portable Storage Units or Procuring Short-term Storage Services, with the following exceptions and conditions:

(a) Before purchasing or renting storage units or procuring storage services, a determination must be made by the Contracting Officer (CO) that existing storage space is not available from other sources within FAA or elsewhere in Government. COs or purchase cardholders must coordinate storage requirements with a real estate CO. This coordination is intended to ensure that no in-house storage capabilities are available, and no real estate or facility factors exist that may affect the procurement, such as applicable real estate regulations or unique site requirements.

(b) Storage units or services for purposes of this guidance are limited to portable storage units or containers designed for temporary (less than six months) on-site use or temporary storage in a secured centralized storage center owned by the vendor. The storage units or containers must be classified as personal property and not affixed or attached by a permanent means to the land (real property) upon which they may be situated for temporary use. If the portable storage unit or container is to be placed on land owned or leased by FAA, the CO or cardholder must ensure FAA has legally established rights to use the land before staging or storing a third party item of property (storage unit or container) procured under a service agreement.

(c) When possible, storage requirements for a construction project should be incorporated into the statement of work or specification under the associated construction contract.

(d) Purchase cards cannot be used:

(1) For purchase, rental, or lease of land or buildings;

(2) To purchase real property, which is defined as land, buildings, structures or rights over or under the land, or things that are permanently affixed or attached to the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself; and

(3) For long-term storage unit rental or services (long-term is defined as six months or more), unless the purchase card is being used as a payment vehicle against a contract or lease signed by a CO or real estate CO and:

(i) The total cost of rental or purchase of storage services does not exceed the cardholder's delegated authority;

(ii) The portable units are not classified as real property (as defined above); and

(iii) The terms and conditions of the rental or storage services (i.e. termination authority) are set forth in writing and signed by both parties.

(22) Purchasing Printers and Other Printing Devices:

(a) Purchases of desktop and/or stand-alone imaging devices and related consumables require approved waivers in accordance with FAA Order 1720.37A.

(23) **Certain Telecommunications and Video Surveillance Services or Equipment** are prohibited, as provided in T3.6.4 A 16.

5 FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops Revised 9/2020

a. FAA-sponsored conferences, seminars, ceremonies, and workshops are a routine element of FAA operations. FAA personnel must consider certain special requirements when planning and conducting such events. All such conferences must comply with the standard operating procedures (SOPs) specified by the Office of Financial Analysis. For current forms and guidance, please see the Financial Standard Operating Procedure "Planning Meetings, Conferences, Workshops, Training Events and Award Ceremonies in the FAA" at the Financial Services website <https://employees.faa.gov/org/staffoffices/afn/finance/sop/?selected=Planning Meetings, Conferences, Workshops, Training Events, and Award Ceremonies in the FAA>

b. *Securing Conference Space.* The real estate Contracting Officers have the authority to secure conference space. Generally, such space can be contracted for utilizing a standard purchase order or on a purchase card. If the conference space provider produces their own conference form, it must be reviewed for unacceptable terms/language and when acceptable, signed by a real estate Contracting Officer.

c. *Legal Review.* Legal counsel must first review any agreement in excess of \$100,000 (total Government expenditures including room charges for the attendees) between FAA and a conference space provider. Except as provided below, agreements below \$100,000 do not require legal review, but review may be sought at the discretion of the real estate CO or the real estate CO's designate.

(1) Changes to the following AMS clauses require legal review regardless of the dollar value:

(a) 3.9.1-1 Contract Disputes; and

(b) 3.10.6-1 Termination for Convenience of the Government (Fixed Price).

(2) Incorporation of the following clauses requires legal review regardless of the dollar value:

(a) Clauses making any law (including state law) other than Federal law controlling;

(b) Clauses that establish liability beyond what is funded or contingent liability beyond the limits imposed allowed the Federal Tort Claims Act; and

(c) Clauses requiring binding arbitration.

d. *Travel-related Costs.* Employee's travel, hotel, local transportation, and per diem must be paid with the FAA travel card. An employee's travel-related costs cannot be paid for under a contract, purchase order, or FAA purchase card.

e. *Items for Distribution to Conference Attendees.* Generally, personal use items, such as mugs, clothing, or bags, cannot be purchased and given to conference attendees. Conference planners must consult with legal counsel before purchasing any items to be distributed to conference or event attendees.

f. *Food and Beverage.*

(1) The FAA may purchase food and beverage for conference participants under the following narrowly defined circumstances:

(a) *Formal Conferences.*

(i) The term "formal conference" usually denotes topical matters of interest to and participation of multiple agencies and/or non-Governmental participants. Other indicators are registration, published substantive agenda, scheduled speakers and discussion panels.

(ii) The meals, beverages, and refreshments must be incidental to the conference.

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(iv) The meals, beverages, and refreshments must be part of a formal conference that includes both substantial functions at the time the meals, beverages and refreshments are served and substantial functions separate from when food, beverages, or refreshments are served.

(v) At formal conferences where the above criteria are met, FAA may also pay for the food, beverages, and

refreshments of private citizens or Federal employees from other agencies when an administrative determination is made that their attendance is necessary to achieve the program or conference objectives.

(b) *Internal FAA Training Conferences.* The meals, beverages, and refreshments must be:

(i) Incidental to the conference;

(ii) Attendance at the meals must be necessary for full participation in the conference; and

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(c) *Award Ceremonies.* The FAA may purchase light refreshments for award ceremonies. If not awarded through a contract or purchase order, the FAA purchase card must be used to purchase light refreshments.

(d) *Cultural Awareness Ceremonies.* The FAA may purchase food or beverage if part of a formal program intended to both advance Equal Employment Opportunity objectives and provide cultural or ethnic awareness. Food and beverage must be part of a culture's food and beverage and offered as part of a larger program that serves an educational function.

(e) *Official Receptions.* For official receptions hosted by the Administrator (or designated senior executive) for foreign or non-Federal dignitaries, FAA may purchase light refreshments, meals, snacks, and beverages. The Administrator's official reception and representation funds must be used for these events (see FAA Order 1200.3E). The FAA purchase card may be used to purchase food or beverage for these events.

(2) Except for FAA award ceremonies and the Administrator's official receptions, FAA purchase card cannot be used as a procurement vehicle for food and beverage; a purchase order or contract must be used instead. However, the purchase card may be used to make payment against a duly executed contract signed by a warranted real estate CO.

(3) Food and beverage costs must be reasonable, must not include alcoholic drinks, and cannot be purchased for amusement or social events, such as networking sessions, team-building exercises, or hospitality suites (except hospitality functions at the Administrator's official receptions).

(4) The FAA cannot purchase food and beverage for routine meetings to discuss day-to-day issues. Examples of routine meetings include those to discuss day-to-day operations, to develop business plans to accompany FAA goals, or to develop performance targets.

(5) The FAA may pay a facility rental fee that includes the cost of food or beverages provided to FAA employees where the fee is all-inclusive, not negotiable and competitively priced to those that do not include food.

(6) Foods that constitute “light refreshments” are snacks, such as cookies, and beverages. Light refreshments for morning, afternoon or evening breaks are defined to include: coffee, tea, milk, juice, soft drinks, water, donuts, bagels, fruit, pretzels, cookies, chips, muffins or related items of similar value. This is distinguished from a meal such as breakfast, lunch or dinner, or multiple heavy hors d'oeuvres. Meals are not “light refreshments.”

g. *Justification for Food and Beverage.* The FAA's policy is to not use, nor create the appearance of use of, Government funds to entertain Federal employees. Before contracting for a conference or event with food and beverage, the Director (or equivalent management level) of the organization sponsoring the event and legal counsel must approve a written justification explaining why food and beverage is necessary. The justification must describe:

- (1) Nature and purpose of the event;
- (2) Applicability of the event to FAA’s programs or activities;
- (3) Any statutory, regulatory, or other authority for the event;
- (4) Participants;
- (5) Dates;
- (6) Facility and location;
- (7) Estimated cost;
- (8) Reason why food and beverage is necessary;
- (9) Meal(s) that will need to be offset in attendees’ travel vouchers; and
- (10) Keynote functions which include meals. The description of the function is to include any keynote speakers, the type of presentation(s) being given and how they are integral to the conference.

h. *Travel Vouchers and Per Diem.* Conference attendees must offset in their travel vouchers the cost of meals paid for and provided by the Government. Light refreshments do not need to be offset in travel vouchers. See FAA Travel Policy for rules when meals are furnished by the Government.

i. *Registration Fees.* Registration fees are payments collected by FAA, or a support contractor on behalf of FAA, from private and other public participants attending an FAA- sponsored conference.

If FAA wishes to charge a registration fee, it must have statutory authority to do so. Under 31 U.S.C. 3302(b), FAA must deposit registration fees in the U.S. Treasury, unless there is specific statutory authority for FAA to keep and use fees collected. Under 49 U.S.C. 45303, the FAA currently has statutory authority to credit back to its operations account authorized collections; therefore conference planners should check with legal counsel before depositing authorized registration fees into the General Fund of the United States Treasury Department. FAA may authorize a contractor providing conference services to charge a registration fee to conference participants. In cases where the FAA co-sponsors a conference and the co-sponsor incurs costs of the conference without FAA reimbursement, the co-sponsor is also permitted to collect registration fees. The registration fee amount is subject to the real estate Contracting Officer approval consistent with the contract terms and conditions and may include a reasonable profit for the contractor's efforts.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

Section Revised:

3.2.2.7 D 1 – Definitions

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

1 Responsibility Determination of Prospective Contractors Revised 9/2020

2 Responsibility Determination for Real Property Added 9/2020

3 Team Arrangements Revised 9/2020

4 Debarment and Suspension Revised 9/2020

5 Notices to GSA and SAM Revised 9/2020

6 Prohibition Against Contracting with Inverted Domestic Corporations Revised 9/2020

B Clauses

C Forms

D Appendix 1 - Definitions Revised ~~9/2020~~ 10/2020

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

1 Responsibility Determination of Prospective Contractors Revised 9/2020

a. *General Standards.* A responsible contractor:

- (1) Has or can obtain adequate financial resources to perform a contract;
- (2) Has the ability to meet any required or proposed delivery schedules;
- (3) Has a satisfactory performance history;
- (4) Has a record of integrity and proper business ethics;
- (5) Has appropriate accounting and operational controls that may include, but are not limited to:
 - (a) Production control;
 - (b) Property control systems;
 - (c) Quality assurance programs; and
 - (d) Appropriate safety programs; and
- (6) Is qualified and eligible to receive an award under applicable laws or regulations.

b. *Determination.*

- (1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a prospective contractor is responsible with respect to that contract.
- (2) The burden of proof is on the prospective contractor to demonstrate its responsibility to perform under the terms of the contract.

c. *Obtaining Information.* When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a prospective contractor currently meets applicable standards. The CO should apply the following guidelines in collecting data/information:

- (1) Generally, the CO should obtain information on prospective contractors promptly after receipt of offers. Requests for information should ordinarily be limited to information from those offerors most likely to be considered for award, and may include requesting

preaward surveys. Depending on the circumstances, the CO may obtain this information before issuing the Screening Information Request (SIR).

(a) A preaward survey may be useful when the information on hand or readily available to the CO is not sufficient to make a determination regarding responsibility. When the requirement is for smaller dollar amounts or commercial items, the CO should consider the cost of the preaward survey in relationship to the requirement.

(b) Preaward surveys should be managed and conducted by the surveying activity. Whether the surveying activity is within or outside of the contract administration office, the CO should obtain from the office or auditor:

(i) Any information required concerning the prospective contractor's financial competence and credit needs; and

(ii) The adequacy of the prospective contractor's accounting systems and the suitability of their use in administering the proposed type of contract.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity should specify the extent to which the prospective contractor has taken or plans corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance.

(d) The surveying activity may provide an abbreviated survey report when it possesses information that supports a recommendation of complete award without an on-site survey and no special area for investigation has been requested.

(e) Information on financial resources and performance capability should be current as of the date of award.

(f) The CO's request to the surveying activity should include:

(i) Additional factors about which information is needed;

(ii) The complete SIR package (unless it was previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(iii) A statement whether the contracting office will participate in the survey;

(iv) The date by which the report is required. This date should be consistent with the scope of the survey requested and normally should allow at least 7 working days to conduct the survey; and

(v) When appropriate, limitations on the scope of the survey.

(2) In addition to the preaward survey, the CO may use the following sources of information to support responsibility determinations:

(a) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(b) The prospective contractor, including proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(c) Other sources such as publications, suppliers, subcontractors, customers of the prospective contractor, and financial institutions; or

(d) If the contract is for construction, the CO may consider performance evaluation reports.

(3) The CO must review the "Exclusions" portion of the "Performance Information" capability in the System for Award Management (SAM) to ensure prospective contractors are not listed. (See Notices to SAM below).

(4) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully should promptly exchange relevant information.

d. *Documentation.* The CO should consider the following guidelines for documenting contractor responsibility determinations:

(1) A determination of responsibility requires no additional documentation beyond the CO's signature on the contract. Supporting documents such as the preaward survey reports, performance records, and related data/information should be included with other contract file documentation.

(2) If a prospective offeror who is otherwise eligible to receive an award is determined to be nonresponsible, the CO should insert signed documentation in the contract file supporting the nonresponsibility determination. Supporting documentation such as preaward survey reports, performance records, and related data/information should also be included in the file with the nonresponsibility determination.

(3) A nonresponsibility determination for a small business is processed in the same manner as for large businesses. There is no requirement to coordinate with the Small Business

Administration (SBA); however the CO may choose to consult with FAA's Office of Small Business Development (OSBD) or local Small Business Development staff.

2 Responsibility Determination for Real Property Added 9/2020

a. General Standards. A responsible vendor or Owner:

- (1) Has sufficient interest in subject property to convey property rights to the FAA or authorization to enter into contracts on behalf of the Owner.
- (2) Has good, clear title to the property, meaning that the title is valid and the property is clear of any liens.
- (3) Is qualified and eligible to receive an award under applicable laws or regulations.
- (4) Has a satisfactory performance history; and
- (5) Has a record of integrity and proper business ethics.

b. Determination.

- (1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a vendor or owner is responsible with respect to that contract.
- (2) The burden of proof is on the vendor or owner to demonstrate its responsibility to perform under the terms of the contract.

c. Obtaining Information. When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a vendor or owner currently meets applicable standards.

d. Documentation. The CO should consider the following guidelines for documenting a vendor or owner responsibility determination:

- (1) Supporting documents such as land surveys, warranty deed, property records, performance records, and related data/information should be included with other contract file documentation.
- (2) If a vendor or owner is otherwise eligible to receive an award is determined to be non-responsible, the CO should insert signed documentation in the contract file supporting the non-responsibility determination. Supporting documentation such as performance

records and related data/information should also be included in the file with the non-responsibility determination.

3 Team Arrangements Revised 9/2020

a. General.

- (1) Team arrangements are cooperative arrangements where:
 - (a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
 - (b) A potential prime contractor enters into an agreement with one or more other companies to have them act as subcontractors under a specific contract.
- (2) Benefits of team arrangements to both FAA and an offeror or contractor include, but are not limited to:
 - (a) Increases competitive edge and presents a stronger position to FAA;
 - (b) Provides companies access to new markets and opportunities;
 - (c) Allows companies to collaborate and focus on their core capabilities;
 - (d) Brings differing skills and experience together into one solution for FAA;
 - (e) More opportunities for small and small disadvantaged businesses; and
 - (f) Decreased costs.
- (3) Team arrangements may prove particularly appropriate for research and development (R&D) requirements; however they may be used in other types of acquisitions as well.
- (4) FAA will not normally require the dissolution of team arrangements.
- (5) Guidance on determining small business size standards for team arrangements can be found in AMS Procurement Guidance T3.6.1.

b. Joint Venture.

- (1) A joint venture is a separate legal entity, such as a partnership or corporation, formed by two or more parties to conduct business.
- (2) In a joint venture, each party contributes equity and shares:

- (a) In any revenues;
- (b) Expenses incurred; and
- (c) In the management or control of the venture.

(3) Joint ventures may be a continuing business relationship or for just one or more projects.

c. *Disclosure of Team Arrangements.* In order for FAA to recognize the validity of a team arrangement, the arrangement and company relationships must be fully disclosed:

- (1) In the offer; or
- (2) Before the arrangement becomes effective when formed after the submission of an offer or contract award.

d. *Antitrust Law and FAA Rights.*

- (1) All team arrangements must comply with all applicable antitrust statutes.
- (2) Despite any team arrangement, FAA retains the right to:
 - (a) Require consent to subcontracts;
 - (b) Determine the responsibility of the prime contractor;
 - (c) Provide to the prime contractor data rights owned or controlled by the Government;
 - (d) Hold the prime contractor responsible for contract performance; and
 - (e) Apply other AMS requirements such as those for competition or subcontracting.

4 Debarment and Suspension Revised 9/2020

a. *General.*

- (1) Debarment and suspension are discretionary actions that are appropriate means to implement FAA policy and should be undertaken only to protect the interest of FAA. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts. FAA will not solicit offers from, award contracts to, consent to

subcontracts, or conduct business with contractors that are debarred, suspended, or proposed for debarment:

- (a) In their individual capacities;
- (b) As agents or representatives of other contractors; or
- (c) As sureties on FAA contracts.

(2) *Compelling Exception.* The FAA will not conduct business with contractors that are debarred, suspended, or proposed for debarment, unless the Administrator, or designee, determines that there is a compelling reason for such action.

(3) *Debarring/Suspending Official.* The Administrator is both the debarring official and the suspending official. However, the Administrator may authorize individuals to act as the debarring or suspending official. The debarring or suspending official is the only individual with the authority to make debarment or suspension decisions.

(4) *Effect on Divisions/Affiliates.* Suspension or debarment applies to all divisions or other organizational elements of the contractor, unless the suspension or debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring and suspending official(s) may also extend the debarment decision to include any affiliates of the contractor if they are:

- (a) Specifically named;
- (b) Given written notice of the proposed debarment; and
- (c) Given written notice of an opportunity to respond.

(5) *Continuation of Current Contracts.* Contractors debarred, suspended or proposed for debarment may continue to perform current contracts or subcontracts, unless the Administrator or designee determines otherwise. However, FAA should not renew or extend the current contract period, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment unless the Administrator, or designee, determines that there are compelling reasons for renewal or extension.

(6) *Ineligible Based on Statute or Regulation.* Contractors declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the periods set forth in the statute or regulation.

(7) *Initiating the Debarment/Suspension Action.* When the CO, or requisitioner/program official, determines that cause for debarment or suspension may exist, the information together with any supporting documentation should be provided to the Assistant Chief Counsel for the Procurement Legal Division (AGC-500). AGC-500 will appoint a

debarment/suspension officer to investigate whether cause for debarment or suspension exists. The FAA Acquisition Executive will have oversight responsibility and will monitor implementation of the debarment and suspension program.

(8) *The Administrative Record*. The debarment officer will assemble the Administrative Record, which is a consolidated set of records, information, and documentation that clearly demonstrates the basis for the debarment or suspension and the events and actions taken throughout the entire process such as:

- (a) Cause for debarment or suspension;
- (b) Notice of proposal to debar/suspend;
- (c) Contractor's responses, arguments, disputes;
- (d) Consideration given to contractor's responses;
- (e) Resolution of contractor's comments or disputes, etc.;
- (f) Findings of fact;
- (g) Other communications with the contractor;
- (h) Final report and recommendation to the Debarring Official/Suspending Official;
- (i) Debarring/Suspension Official determinations;
- (j) Final notice to the contractor/affiliate; and
- (k) Notice to the General Services Administration (GSA) regarding the debarment/suspension (see Notices to GSA and System for Award Management (SAM) below). The notice should include the FAA-accepted acronym "DOT- FAA."
- (l) Within 45 days of proper notification ("proper notification" is defined as: a referral from the Office of Inspector General that includes either a copy of the Federal, State, or local indictment or civil complaint or other official correspondence or documentation evidencing the indictment or civil complaint from the Department of Justice/United States Attorney. (Internet sources and local newspaper articles as well as unverified news sources are unacceptable for documentation)), FAA will either initiate a debarment or suspension proceeding, or make a decision that a debarment or suspension is not appropriate. If a decision is made not to initiate a debarment or suspension proceeding after proper notice is received, then a justification will be made part of the written record within 45 days after proper notice.

(9) *Scope of Debarment/Suspension.*

(a) Fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct should be considered as evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent criminal, or other seriously improper, conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(10) *Failure to Disclose Violation of Federal Criminal Law.* Whether or not AMS clause 3.2.5-13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until three (3) years after final payment on a contract.

b. *Debarment.*

(1) *Causes for Debarment.* The debarring official should debar a contractor based upon the following:

(a) Conviction of or civil judgment for:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)); or

(v) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) A preponderance of the evidence for the following:

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of AMS Clause 3.6.3-16, Drug Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)).

(iv) Commission of an unfair trade practice as defined herein (see also Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$3,000

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) Examples.

(1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(3) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. § 3729-3733);
or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

(c) A determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(2) Debarment Procedure

(a) *Notice Of Proposed Debarment.* If after review of the record and any additional investigation, the debarring official determines that there is sufficient cause for debarment, the debarring official must issue a Notice of Proposed Debarment to the contractor and any specifically named affiliates. The notice should be mailed by certified mail, return receipt requested, stating that debarment is being considered. The notice should also state:

(i) The specific name the firm and any affiliate being considered for debarment;

(ii) That debarment is being considered;

(iii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iv) The cause(s) relied upon under Section 3.b, Debarment;

(v) That within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

- (vi) The FAA's process for completing the debarment proceeding;
- (vii) The effect of the issuance of the notice of proposed debarment on the contractor; and
- (viii) The effect of debarment on the contractor and any affiliates.

(b) *Contractor's Response to the Notice of Proposed Debarment.* The contractor's response will be reviewed to identify issues that could affect the outcome and merit further exploration.

(c) *Mitigating Factors.* The existence of a cause for debarment does not require that the contractor be debarred. The debarring official may consider the following mitigating factors, none of which is by itself dispositive, in determining whether or not to debar a contractor:

- (i) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment, or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.
- (ii) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
- (iii) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
- (iv) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
- (v) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (vi) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
- (vii) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

- (viii) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- (ix) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
- (x) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(d) *Debarring Official's Decision.*

(i) *Actions Based Upon a Conviction or Civil Judgment or Without Genuine Dispute Over Material Facts.* In this type of action, the debarring official will consider the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the debarring official should make the decision within 30 working days after receipt of any information and argument submitted by the contractor, or within a reasonable time thereafter.

(ii) *Actions Not Based Upon a Conviction or Civil Judgment.* Where the proposed debarment is **not** based upon a conviction, civil judgment, or indictment, or the contractor's response to the Notice of Proposed Debarment raises a genuine dispute over facts material to the proposed debarment, the debarring official may, upon the request of a contractor:

(A) Provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(B) Make a transcribed record of the proceedings and make it available at cost to the contractor.

(iii) *Evidentiary Standard for Debarments not Based Upon Conviction or Civil Judgment.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(iv) *Demonstrating Responsibility.* If a cause for debarment exists, the contractor has the burden of demonstrating that, notwithstanding the existence of a cause or causes for debarment, the contractor is presently responsible to perform Government contracts.

(v) *Period of Debarment.*

(A) The debarring official should consider the facts and determine a debarment period commensurate with the seriousness of the cause(s) and sufficient to protect the Government's interest. Generally, debarment should not exceed three (3) years, except that debarment for violation of the provisions of the Drug- Free Workplace Act of 1988 may be for a period not to exceed five (5) years. Debarments subject to the Immigration and Nationality Act should not exceed one (1) year and may be extended for additional periods of one (1) year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If suspension precedes a debarment, the suspension period should be considered in determining the debarment period.

(B) The debarring official should extend the period of debarment if that official determines that extension is necessary to protect the Government. However, a debarment may not be extended solely on the basis on the facts and circumstances upon which the initial debarment action was based.

(e) Notice of Debarment to Contractor/Affiliates.

(i) The debarring official will provide the contractor and each affiliate identified for debarment/suspension with a Notice of Debarment/Suspension by mailing the notice by certified mail, return receipt requested. The notice will:

(A) Refer to the Notice of Proposed Debarment;

(B) Specify the reasons for debarment;

(C) State the period of suspension/debarment, including effective dates; and

(D) Advise that the debarment is effective throughout the executive branch of the Government unless the debarring official determines that there are compelling reasons for FAA to continue to do business with the contractor.

(ii) *Debarment Not Imposed.* If debarment is not imposed, the debarring official will promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

c. Suspension.

(1) *Applicability.* Suspension is appropriate when the suspending official determines that immediate action is necessary to protect the government's interest pending the completion of legal proceedings, or the agency investigation of the improper conduct.

(2) *Causes for Suspension.*

(a) The suspending official should suspend a contractor as defined herein, upon **adequate evidence**, of:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of the AMS Clause 3.6.3-16, "Drug Free Workplace;" or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace;

(v) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558));

(vi) Commission of an unfair trade practice as defined herein (see section 201 of the Defense Production Act (Pub. L. 102-558));

(vii) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at T3.2.2.7.A.3.b.(1)(b)(i)(B)(v) for when taxes are considered delinquent;

(viii) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to

FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of -

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments; or

(ix) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official should upon **adequate evidence** also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(3) Suspension Procedure.

(a) *Notice of Suspension.* If cause for suspension exists, the suspending official will issue a notice of suspension to the contractor and any specifically named affiliates, if applicable. No hearing is required prior to the imposition of suspension. The notice must be sent by certified mail, return receipt requested, and must state:

(i) That the contractor has been suspended and that the suspension is based upon an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the Government or seriously reflecting on the propriety of further Government dealings with the contractor. The irregularities must be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(ii) That the suspension is for a temporary period pending the completion of the investigation and such legal proceedings that may ensue;

(iii) The cause relied on for suspension (see Causes for Suspension);

(iv) The effect of the suspension on the contractor and affiliates;

(v) That within thirty (30) days after receipt of the notice, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional information that raises a genuine dispute over material facts; and

(vi) That additional proceedings may be conducted to determine disputed material facts unless:

(A) The action is based upon an indictment; or

(B) A determination is made, on the basis of Justice Department advice, that the substantial interests in the Government in a pending or contemplated legal proceeding based on the same facts as the suspension would be prejudiced.

(b) Suspending Official's Decision.

(i) In actions that are based on an indictment, in which the contractor's submission does not raise a genuine dispute over material facts, or in which the Department of Justice has denied additional proceedings to determine disputed facts, the suspending official's decision must be based on the administrative record, including any submission made by the contractor.

(ii) In actions not based upon an indictment or actions in which the Department of Justice has not denied additional proceedings, the suspending official may, upon the contractor's request, provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. At the discretion of the suspending official, a transcribed record of the proceedings may be made and made available at cost to the contractor upon request.

(4) Other Actions by the Suspending Official.

(a) *Written Findings.* The suspending official must make written findings of fact and base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(b) *Suspending Official's.* The suspending official may modify or terminate the suspension or leave it in force. However, a decision to modify or terminate a suspension does not prevent any other agency from suspending or debarring the contractor under the same facts or circumstances.

(5) Period of Suspension.

(a) Suspensions must be for a temporary period as stated in 3.a. (ii) above unless otherwise terminated sooner by the CO. The CO must notify the Department of

Justice (DOJ) of the proposed termination of the suspension at least 30 days prior to the expiration of the initial 12-month period to give DOJ an opportunity to request an extension.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for another 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(6) *Notices to Contractor/Affiliates.* The suspending official must provide prompt written notice of the decision to the contractor and any affiliates involved.

5 Notices to GSA and SAM Revised 9/2020

a. *Notice to GSA.* The appropriate CO, at the direction of the debarring/suspending official, will provide GSA the information specified below within 5 working days after a debarment/suspension is effective:

- (1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible in alphabetical order, with cross-references when more than one name is involved in a single action;
- (2) The name and official acronym ("DOT-FAA") of the agency or other authority taking the action;
- (3) The cause for the action other statutory or regulatory authority;
- (4) The effect of the action;
- (5) The termination date for each listing;
- (6) The DUNS No; and
- (7) The name and telephone number of the point of contract for the action.

b. *System for Award Management (SAM).*

- (1) GSA operates the web-based SAM. The "Exclusions" portion of the "Performance Information" capability includes the:
 - (a) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the

nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(b) Name of the agency or other authority taking the action;

(c) Cause for the action or other statutory or regulatory authority;

(d) Effect of the action;

(e) Termination date for each listing;

(f) DUNS No.;

(g) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(h) Name and telephone number of the agency point of contact for the action.

(2) For information about adding a contractor to SAM, the CO should contact the DOT representative listed under the agency contacts on the SAM website.

6 Prohibition Against Contracting with Inverted Domestic Corporations Revised 9/2020

(a) To be eligible for a contract award, an offeror must represent it is not an inverted domestic corporation or subsidiary as defined under the “Definitions” section below. Any offeror that cannot so represent is ineligible for contract award.

(b) Contracting Officers must rigorously examine known circumstances that would lead a reasonable business person to question an offeror’s self-certification and, after consultation with legal counsel, take appropriate action when that questionable self-certification cannot be verified.

(c) *Waiver.* The FAA Administrator may waive the requirements of this Section if the FAA Administrator determines in writing that a waiver is required in the interest of national security, documents the determination, and reports it to Congress.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Appendix 1 - Definitions Revised 9/2020

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly:

(a) Either one controls or has the power to control the other, or

(b) A third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that:

(a) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

"Debarment," as used in this subpart, means action taken by a debarring official to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

"Debarring official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose debarment.

"Deed" means a legal document conveying title to a property. The most common types of deeds, in order of most protection afforded to the Government, are:

- (a) "General Warranty Deed"- A type of deed in which the grantor fully warrants good, clear title to the premises, meaning that the title is valid and the property is clear of any liens. This is used in most real estate deed transfers, as a general warranty deed offers the greatest protection of any deed. Some states have an official form in the state's laws, commonly known as a statutory warranty deed, where the warranties are implied and are not stated within the deed.
- (b) "Specialty Warranty Deed"- Also called a limited warranty deed, is a type of deed that covers only claims incurred while the grantor has title – not any that arose before the grantor owned the property. A specialty warranty deed is often used when the grantor sells property acquired through foreclosure.
- (c) "Bargain and Sale Deed"- A type of deed wherein the grantor warrants that he/she has title to the property but does not guarantee that the property is free from claims. These are most common when property is transferred pursuant to a foreclosure, tax sale, or settlement of the estate of a deceased person.
- (d) "Quit Claim Deed" – A type of deed wherein the grantor makes no warranties. The grantor transfers whatever ownership interest he/she has in a particular property. The deed does not guarantee anything about what is being transferred. This is the least secure type of deed.

"Excluded Parties List" means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract ~~Act~~Labor Standards, the Equal Employment Opportunity Acts and Executive orders, the Walsh- Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Inverted Domestic Corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b) applied in accordance with the definitions of 6 U.S.C. 395 (c).

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Nonprocurement Common Rule" means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, means the commission of any or the following acts by a contractor:

- (a) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) as determined by the International Trade Commission.
- (b) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.
- (c) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

Section Revised:

3.2.3 D 2 – Appendix – Developing A Detailed Independent Government Cost Estimate for Products, Services, or Construction

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.2.3 - Cost and Price Methodology Revised 10/2007

A Cost and Price Methodology

1 Proposal Analysis Revised 9/2020

2 Independent Government Cost Estimate Revised 9/2020

3 Cost Accounting Standards Revised 9/2020

4 Financial Administrative Contracting Officer (FACO) Revised 9/2020

B Clauses

C Forms

D Appendix Revised 10/2007

1 Appendix - Instructions for Submitting Certified Cost/Price Proposals for Products, Services, or Construction Revised 9/2020

2 Appendix – Developing A Detailed Independent Government Cost Estimate for Products, Services, or Construction Revised ~~9/2020~~ 10/2020

3 Appendix - Template for Detailed Independent Government Cost Estimate for Products, Services, or Construction Revised 9/2020

T3.2.3 - Cost and Price Methodology Revised 10/2007

A Cost and Price Methodology

1 Proposal Analysis Revised 9/2020

The procurement team is responsible for evaluating proposals using the methods of price and cost analysis appropriate to the procurement. Price and cost analysis are used to determine if prices or costs are allowable, reasonable and realistic. The CO is responsible for determining whether contract prices are fair and reasonable. The CO may use one or more cost and pricing methodologies described in this section based on the complexity and type of acquisition. The complexity and circumstances of each acquisition should determine the level of detailed analysis required.

The data used to perform cost or price analysis should be the most current available data. Use of non-current data should be (i) documented as to why more current data was not used or available, and (ii) adjusted if applicable to reflect the purchasing power of the dollar over time. At a minimum, if the data is two or more years old, explain why the older data (escalated to the current year) is adequate for use in determining fair and reasonable pricing. For example, a real property acquisition may only require pricing analysis while a single source complex major systems acquisition may require certified cost or pricing data, cost, and pricing analysis.

a. *Certified Cost or Pricing Data and Information Other Than Certified Cost or Pricing Data.*

(1) Definitions.

(a) *Certified Cost or Pricing Data.* This is cost or pricing data where the offeror certifies as to the accuracy, completeness and currency of the data as of a specific date before execution of the contract action. This includes all facts that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. Certified cost or pricing data found to be inaccurate, incomplete, or noncurrent as of the date of the action allow the Contracting Officer (CO) to adjust the contract price related to the defective data. For real property acquisitions, certified cost or pricing data is not required.

(b) *Information other than certified cost or pricing data.* This is pricing data, cost data, and judgmental information necessary for the CO to determine a fair and reasonable price and/or to determine realism. Such data may include the identical types of data as certified cost or pricing data, but without the certification. The data may also include any information reasonably required to explain the offeror's estimating process, including, but not limited to-

(i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(ii) The nature and amount of contingencies included in the proposed price.

(2) *Types of Information and Evaluation Method.* The CO may require information to support

proposal analysis in any of the following degrees of detail:

- (a) No cost data, in which case a price analysis is conducted;
- (b) Information other than certified cost or pricing data, in which a price analysis and cost analysis appropriate to the data and information submitted are conducted; or
- (c) Certified cost or pricing data, where the offeror certifies to the accuracy, completeness and currency of the data and both price and cost analyses are conducted.

(3) *Decision to Require Data.* A Contracting Officer (CO) has the discretion to determine the level of cost or pricing data required to ensure prices are fair and reasonable. Cost and pricing data should be requested *only* when the CO does not have reasonable assurance that costs or prices are fair and reasonable based on price analysis. When deciding the extent to which cost and pricing data may be required, the CO should consider the cost and schedule burden on the contractor to provide the information.

(a) When the CO determines adequate price competition exists, certified cost or pricing data must not be requested in accordance with Policy 3.2.3.2.

(b) Adequate price competition may exist when:

- (i) Two or more responsible offerors competing independently submit priced offers responsive to FAA's expressed requirement;
- (ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors competing independently would submit priced offers responsive to the screening information request's expressed requirement, although only one offer is received from a responsible responsive offeror; or
- (iii) Price analysis clearly demonstrates that the proposed price is reasonable compared to current or recent prices for the same or similar items purchased in comparable quantities, and under comparable terms and conditions under contracts that resulted from adequate price competition.

(c) If the CO determines that the level of competition does not support the determination of price reasonableness, or the offeror's price cannot be determined to be reasonable from price analysis according to T3.2.3.A.1.b. below, then the CO must require certified cost or pricing data or information other than certified cost or pricing data to the extent necessary to support a determination of a fair and reasonable price (Policy 3.2.3.2). The CO within his or her discretion may, based on price analysis alone, determine that an offeror's price is not fair and reasonable without requesting additional cost data.

(d) In situations where adequate price competition does not exist, the decision to require certified or information other than certified cost or pricing data and the level of data required should be based on the specific circumstances of the procurement taking into account the factors described in subparagraph (4) "Factors to Consider" below.

(4) *Factors To Consider.*

(a) The CO has the flexibility to determine:

(i) Whether or not to require cost or pricing data;

(ii) To what degree or level of detail data should be requested; and

(iii) Whether or not the data should be certified, except for situations where adequate price competition exists (and the CO must not require certified cost or pricing data).

(b) The CO may consider the following factors to determine the appropriate data requirement:

(i) *Recent Pricing Data.* Availability of information on prices for the same or similar goods or services procured on a competitive basis.

(ii) *Degree of Competition Attained.* Level to which competitive market forces can be expected to influence submission of reasonable prices.

(iii) *Uncertainty of the Market Place.* How volatile market prices or technological changes may impact vendor prices or costs.

(iv) *Availability of Independent Cost Estimate/Data.* The degree of confidence the CO has in the internal estimate or other data which would provide an effective means to objectively evaluate proposed costs or prices.

(v) *Technical Complexity of Procurement.* The degree to which developmental effort or technical complexity is inherent in the requirement.

(vi) *Contract Type.* The degree to which the decision of contract type mitigates the risk to the agency.

(5) *Requirement for Certified Cost or Pricing Data.* For products, services, and construction contracts, when certified cost or pricing data are necessary, AMS Clauses 3.2.2.3-38, Requirements for Certified Cost or Pricing Data or Other Information, and 3.2.2.3-39, Requirements for Certified Cost or Pricing Data or Other Information – Modifications, must be inserted in the SIR. The clauses require the contractor to submit the information contained

in the Appendix 1 "Instructions for Submitting Certified Cost/Price Proposals for Supplies, Services, or Construction."

(6) *Requesting Information.* When requesting information other than certified cost or pricing data, the information should be limited to the extent necessary to determine price reasonableness and/or cost realism. The level of detail and format of the data requested will be determined by the CO. In the case of a single-source contract, no one may request any type of cost or price information from the vendor until the single-source justification is fully executed. Generally this will be a modified version of information requested in subparagraph (5), "Requirement for Certified Cost or Pricing Data" above.

(7) *Subcontracts.* Contractors are required to submit certified or information other than cost or pricing data for proposed subcontracts or subcontract modifications only when necessary to determine the reasonableness of the proposed contract or subcontract price, including negotiated final pricing actions. The contractor is responsible for performing cost or price analysis when determining price reasonableness on subcontract proposals and for submitting the subcontract cost or pricing data if requested by the CO.

b. *Price Analysis.* Price analysis is a process of examining and analyzing a proposed price without evaluating separate cost elements and proposed profit/fee. Price analysis is the most commonly used method of proposal analysis and must be performed on all offeror proposals (Policy 3.2.3.2). Even when cost analysis is performed to evaluate individual cost elements of a contractor's proposal, some form of price analysis is needed to ensure that the proposed price is fair and reasonable. There are several techniques that may be used in performing price analysis:

- (1) Comparison of proposed prices received in response to the screening information request;
- (2) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items and services in comparable quantities;
- (3) Application of rough yardsticks (such as dollars per pound, per square foot, or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- (4) Comparison with competitive published catalogs or lists, published market prices or commodities, similar indexes, and discount or rebate arrangements;
- (5) Comparison of proposed prices with independent cost estimates;
- (6) Comparison of comparable real property from multiple listing services actual sales or appraisals; and
- (7) Ascertaining that the price is set by law or regulation.

c. *Cost Analysis.*

(1) Cost analysis is the review and evaluation of the separate cost elements and proposed profit/fee of an offeror's proposal. The CO will determine whether cost analysis is appropriate. Cost analysis is not required to evaluate established catalog or market prices, prices set by law or regulation, real property acquisitions, and commercial items. If there are significant disparities in proposed prices, a limited form of cost analysis may be used to investigate the cause of the disparities. Cost analysis involves examining data submitted by the contractor and the judgmental factors applied in projecting estimated costs. Cost analysis also includes:

- (a) Verification that the contractor's cost submissions are according to disclosed cost accounting procedures;
- (b) Comparisons with previous costs; and
- (c) Forecasts of future costs based on historical cost experience.

(2) Cost analysis is used to determine cost reasonableness when a fair and reasonable price cannot be determined through price analysis alone, and/or the agency needs an understanding of the cost buildup of the proposal to verify cost realism. The data required to perform the cost analysis should be limited to those cost elements that are necessary to ensure a fair and reasonable, and if necessary, a realistic price determination.

(3) Cost analysis involves the following techniques and procedures:

- (a) Verification of cost or pricing data and evaluation of cost elements, including indirect and direct costs. Proposed material direct costs should be examined for quantity, type, and price;
- (b) Evaluating the effect of the offeror's current practices on future costs;
- (c) Comparison of the costs proposed by the offeror with historical and actual costs, and previous cost estimates for the same or similar items;
- (d) Analysis of the contractor's evaluation in determining the reasonableness of the subcontract costs;
- (e) Verification of the offeror's proposed cost to ensure that it reflects cost realism and reasonableness; and
- (f) Review to determine whether any cost or pricing data that is necessary to make the contractor's proposal accurate, complete, and current has been submitted or identified in writing.

d. Supplemental Proposal Analysis Considerations

The following supplemental proposal analysis considerations are not applicable to real property transactions:

(1) *Field Pricing Support.*

Field pricing support is independent support intended to give the CO a detailed analysis and report of the contractor's cost proposal or other areas related to contract pricing. Field pricing support personnel include, but are not limited to, COs, auditors, price analysts, quality assurance personnel, and engineers. The CO may request field pricing support when necessary.

(2) *Pre- and Post-Award Audits.*

(a) The CO coordinates with Cost/Price Analysis Services (AAP-500) to request all pre-award/post-award audits on all cost reimbursement contracts (including task orders and contracts with reimbursable CLINs over 15% of the total contract value) estimated to exceed \$100 million (including all options or ceiling amounts). AAP-500 will initiate any pre-award or post award audit requests with DCAA or other audit firms to provide audit support services. The FAA also requests audits on at least 15% of all cost reimbursement contracts under \$100 million (Policy 3.2.3.3). AAP-500 is responsible for making a determination as to which cost reimbursement contracts under \$100 million will require an audit. It is always within the CO's discretion to request an audit of a contract. If AAP-500 determines not to obtain an audit on a cost reimbursement contract, AAP-500 will document their rationale for AAP-500 files. At the discretion of the CO, audits may also be requested on other types of contracts.

(b) Program offices fund required pre- and post-award audits, except incurred cost audits, which are currently funded by AAP-500. Cost/Price Analysis Services (AAP-500) tracks and manages requested and completed audits. Although Defense Contract Audit Agency (DCAA) provides audit support for civilian agencies, FAA may also obtain support from other public or private audit organizations as necessary.

(c) The CO should appropriately scope audit requests considering the nature of the procurement, data to be reviewed, recent audits, and the contractor to be audited. Cost/Price Analysis Services (AAP-500) can advise the CO about scoping the request. Audits may cover one or more of the following:

Pre-award

- a. Pre-award survey (new contract)
- b. Proposal audit (full or selected portions)
- c. Forward pricing rates or billing rates
- d. Rate verification (direct and indirect)
- e. Cost Accounting Standards compliance review
- f. Cost accounting system adequacy (labor, indirect and other direct cost systems)
- g. Earned value management system audit
- h. Contractor purchasing system review
- i. Billing system review
- j. Estimating system review
- k. Information technology system review
- l. Material management and accounting system review

- m. Basis of estimate
- n. Bill of material and long lead items

Post-award

- a. Proposal for contract modification
- b. Defective pricing
- c. Incurred cost
- d. Invoice reviews for allowability or improper payment
- e. Claims and request for equitable adjustment
- f. Final price submission
- g. Termination
- h. Closeout

(d) The CO should use good business judgment consistent with applicable AMS guidance when deciding whether to obtain audits. If a CO decides not to obtain an audit, the file should be documented with a rational basis as to why the audit was not obtained. The cost of the audit compared to the expected payback should also be considered.

(3) Defective Pricing.

(a) Defective certified cost or pricing data is data which was provided to FAA in support of a proposal and which was not current, accurate, or complete. It may only occur when certified cost or pricing data is provided. If, before agreement in price, the CO learns that any certified cost or pricing data the contractor provided are inaccurate, incomplete, or not current, the contractor is notified immediately to determine if the defective data increase or decrease the contract price. The CO then negotiates using any new data submitted or making allowance for the incorrect data.

(b) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of agreement, the CO should give the contractor an opportunity to support the accuracy, completeness, and currency of the questioned data. In addition, the CO may obtain an audit to evaluate the accuracy, completeness, and currency of the data. The contractor should reimburse FAA for any payments issued based on defective cost or pricing data during the contract period. The reimbursement should include the amount identified by the CO including profit or fee and interest accrued from the date of the payment. If defective pricing is determined to exist, this fact should be noted in future past performance evaluations.

(c) If a contractor and subcontractor submitted certified cost or pricing data, the CO has the right, under the clause prescribed in the contract to reduce the contract price if it significantly increased due to contractor submitted defective data. This right applies whether the data supported subcontractor cost estimates or firm agreements between subcontractors and contractors. In order to afford an opportunity for corrective action, the CO should give the contractor reasonable advanced notice before determining to reduce the contract price when:

- (i) A contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for work). Any adjustment in the contract price due to defective subcontract data is limited to the difference, plus applicable indirect cost and profit/fee, between the subcontract price used for pricing the contract and either the actual subcontract or the actual cost to the contractor.

- (ii) Under cost-reimbursement contracts and fixed price incentive contracts, payments to subcontracts that are higher than they would be had there been no defective subcontractor cost or pricing data will be the basis for disallowance or non-recognition of costs.

(4) *Profit/Fee Analysis.*

- (a) When price analysis techniques are sufficient to ensure a fair and reasonable price, analysis of profit/fee is not appropriate.
- (b) When cost analysis is required for price negotiation, profit/fee is analyzed.

1. Profit/fee should be analyzed with the objective of rewarding contractors for:

- (i) Financial and other risks they assume;
- (ii) Resources they use; and
- (iii) Organization, performance, and management capabilities they employ.

2. Consideration should be given to the:

- (i) Ratio of indirect costs to direct costs;
- (ii) Extent of subcontracting;
- (iii) Complexity of materials requirements; and
- (iv) Commitment of capital investments to contract performance.

(c) For the purposes of establishing a negotiation position the CO may use some structured method (e.g. agency-mandated weighted guidelines) for determining the profit/fee appropriate for the work to be performed. The CO is encouraged to establish a structured mechanism under cost reimbursable contracts which relates performance to fee amounts earned.

(5) *Cost and Price Realism.*

(a) The purpose of realism analysis is to ensure that proposed prices are not so low such that contract performance is put at risk from either a technical and/or cost perspective. It is separate from analyses performed to determine cost or price reasonableness. Realism analysis determines whether an offeror's proposed costs and/or prices:

- 1. Are realistic for the work to be performed;
- 2. Reflect a clear understanding of the requirements; and
- 3. Are consistent with the various elements of the offeror's technical proposal.

(b) Cost Realism.

1. Cost realism analysis is an objective process of identifying the specific elements of a cost estimate or a proposed price and comparing those elements against reliable and independent means of cost measurement. This analysis judges whether or not the estimates under analysis are verifiable, complete, and accurate, and whether or not the offeror's estimating methodology is logical, appropriate, and adequately explained. This verifies that the cost or prices proposed fairly represent the costs likely to be incurred for the proposed services under the offeror's technical and management approach.

2. Cost realism analysis is used for analysis of proposed costs on cost reimbursement contracts, competitive fixed-price incentive contracts, and may also be used on time and material contracts, and, if necessary, on competitive fixed price contracts.

3. Cost realism analysis determines whether proposed costs may be overstated or understated with respect to performing SIR requirements using the contractor's unique and described methods in the cost and technical proposals. The offeror's Most Probable Cost (MPC) is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

4. The MPC may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The MPC, not the proposed cost, is used for purposes of evaluation to determine the best value.

5. Cost Realism Evaluation Steps:

(i) Obtain other than certified cost or pricing information from the offeror, including detailed proposal breakdown by cost element and the associated basis of estimates (BOEs) for work to be performed.

(ii) Obtain cost realism analysis support from designated member(s) of the acquisition team. The technical cost realism acquisition team member(s) review the SIR requirements, and each offeror's technical and cost proposal, to ensure the cost proposal reflects the costs required to accomplish the work through the unique methods and approaches identified in the offeror's technical proposal. The technical cost realism reviewer determines which direct labor hours and other direct costs should be adjusted up or down and by what amount. This includes a review of material direct costs (including types and quantities of material proposed).

(iii) The reviewer provides a cost realism analysis to the cost evaluation team. NOTE: The technical cost realism reviewer must not be a member of the technical evaluation team unless the technical evaluation has been completed, reviewed, and signed. This is necessary to avoid any potential bias in the technical evaluation related to information in the cost proposal.

(iv) Obtain information from Government sources related to contractor direct and indirect rates, i.e. Forward Pricing Rate Agreements or Recommendations (FPRA/FPRRs). Revise the offeror's proposed rates to reflect the Government's expectation of final rates, as appropriate.

(v) Determine each offeror's Most Probable Cost using the cost realism analysis and any indirect rate revisions to adjust the proposed costs. Include fee

adjustments as appropriate for changes in estimated costs. The MPC represents the costs most likely to be incurred by the offeror in performance of the effort. Use the offeror's MPC for best value analysis.

(c) Price Realism.

6. Price Realism analysis is an objective process that focuses on the proposed price and performance risks. Price realism is used when requirements may not be fully understood by the offeror, there are quality concerns, or past experience indicates that contractors' proposed prices have resulted in quality or service shortfalls.

7. Price realism may be used for price proposal analysis on competitive fixed-price contracts.

8. Unlike in cost realism analysis, the offeror's proposed price is not adjusted for the Most Probable Cost. The focus is on the price and the ability of the offeror to perform the contract requirements for the proposed price, not the individual cost elements.

9. Results of the analysis may be used in performance risk assessments and responsibility determinations.

10. Price Realism Evaluation Steps:

(i) Obtain price information from the offeror, but no cost data is provided.

(ii) Obtain information from Government or industry sources that can be used for price realism determination such as:

- a. Comparison to the IGCE;
- b. Published catalog prices;
- c. Previous contract prices for similar items in similar quantities procured on a competitive basis;
- d. Published fully burdened

labor rates appropriate to proposed labor categories and geographic location;
e. Published price indices such as Global Insight for escalation factors; and
f. Other methods of price analysis as described in T.3.2.3.A.1.b.

(iii) Obtain analysis support from the acquisition team related to the offeror's understanding of technical requirements, past performance, and financial capability.

(iv) Document the price realism analysis and its conclusion. If the analysis indicates proposed prices may be unrealistic, the CO may determine that additional analysis, including cost realism, is required. Information other than certified cost and pricing data would be requested to support additional analysis. For either price realism or cost realism analyses for fixed-price contracts, do not adjust the offeror's proposed price.

(d) Realism Analysis and Risk. A practical example of the need for realism analysis is the tendency of some contractors to "buy-in" to a contract award. "Buying-in" refers to an offeror submitting an offer below anticipated contract costs. Contractors may "buy-in" for purely business reasons or may expect to recover losses through an increase of the contract price after award or through receiving follow-on contracts at artificially high prices. Buying-in may decrease competition or result in poor contract performance. The CO should minimize the opportunity for buying-in through the following appropriate actions:

- (a) Use cost analysis in evaluating proposals for follow-on contracts and change orders;
- (b) Price contract options for additional quantities together with the firm contract quantity, that equal program requirements;

(c) Develop an estimate of the proper price level or value of the products or services to be purchased; and

(d) Verify that contract type and price are consistent with the uncertainty and risk to FAA and contractor while at the same time providing the contractor with the greatest incentive for efficient and economical performance.

The foregoing does not mean that the CO should refuse to award a contract when a buy-in is apparent. The CO should evaluate the attendant risks of costs escalating out of control or the contractor not being able to successfully complete performance. For cost-reimbursable contracts, an award based on an unreasonably low cost would represent a significant risk to the agency because the final price paid by the Government is based on incurred costs. For fixed-price contracts, the cost risk is on the contractor, but an unrealistically low price could create performance risks resulting in poor performance or default. FAA reserves the right to make an informed judgment and decide whether to award or not based on downstream consequences emanating from potential change orders, etc.

(e) **Evaluation Criteria and Realism Analysis.** When using realism analysis in evaluating offers for contract award, the SIR should state that cost realism or price realism may be used as part of the evaluation process and define how the analysis will be considered. Fixed-price contracts may reserve the right to perform realism analysis only if the CO determines it is necessary based on proposed prices.

(6) *Unbalanced Offer.* Offeror proposals should be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the prices for options in relationship to the prices for the basic requirements. An offer is mathematically unbalanced if it is based on prices which are significantly less than the cost of some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced and if there is reasonable doubt that the offer would result in the lowest overall cost to FAA (even though it is the lowest evaluated offer); or the offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. Offers that are materially unbalanced may be rejected. Depending on the nature of the procurement, price analysis or cost analysis should be used in determining whether offers are materially unbalanced.

2 Independent Government Cost Estimate Revised 9/2020

a. Purpose of an IGCE

(1) An independent Government cost estimate (IGCE) is an internal Government estimate, supported by factual or reasoned data and documentation, describing how much FAA could reasonably expect to pay for needed real property, product or services. It serves as:

(a) The basis for reserving funds for the procurement action;

(b) A method for comparing cost or price proposed by offerors;

(c) An objective basis for determining price reasonableness when only one offer is received in response to a solicitation; and

(d) A means of detecting offeror buy-ins and identifying unbalanced prices.

(2) The CO must ensure, through cost and/or price analysis, that the final price is fair and reasonable for all acquisitions (Policy 3.2.3). One of several techniques in performing price analysis is comparison of the proposed prices with an IGCE. Its primary objective is to provide the CO with an unbiased, realistic cost estimate for proposed products, services, and construction.

(3) A well-supported IGCE is a valuable tool for price negotiations, especially in the case of a single source acquisition. Clearly defined and supported cost elements such as labor, overhead, and travel enable FAA to make informed negotiation decisions. A well-reasoned IGCE helps FAA to verify completeness of offeror or contractor's cost proposals.

b. *Applicability.* An IGCE is required for procurement actions over \$150,000 (or for any lower dollar value procurement action when the CO determines it necessary) (Policy 3.2.1.2.4), except for:

(1) Modifications to exercise priced options;

(2) Incremental funding modifications;

(3) Delivery orders for priced products or services under indefinite delivery contracts;

(4) Acquisition of real property for a site-specific requirement for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA; or for operational facilities that house equipment and/or personnel that provide Air Traffic Control services to aircraft operating in the NAS; or

(5) Supplies or services with prices set by law or regulation.

c. *Responsibility for Preparation.*

(1) The program office is responsible for the IGCE. Non-Government personnel (excluding any personnel of potential offerors) may support a program official in preparing the IGCE. Because the IGCE is procurement sensitive, access to it must be on a need to know basis. The IGCE must be signed and dated by the Government preparer.

(2) The IGCE must not be based on information furnished solely by a potential offer that may be considered for award, or based on an offeror's cost/price proposal after receipt of offers.

d. *When to Submit.* An IGCE should accompany the procurement request package. The IGCE

becomes part of the official contract file documentation.

e. *Proper Marking.* Each IGCE must be designated and marked, “FOR OFFICIAL USE ONLY.”

f. *Commercial and Simplified Procurement Actions.* Published price lists, catalog prices, historical prices, General Services Administration (GSA) schedule prices, or market survey prices may suffice for an IGCE involving standard commercial materials, products, equipment, real property related services, and noncomplex services readily available in the commercial market. Lump sum estimates for commercial and noncomplex products, services, and real property related services do not break down the estimate into various cost elements. An IGCE for commercial and noncomplex products, services, and real property related services may entail determining the market value of an item, service, or real property related service and using that as the basis for the IGCE, documenting the research, and then furnishing this information to the CO.

g. *Differences Between Proposal Price and IGCE.* When there are differences greater than 15% between the price of the offer proposed for award and the IGCE, the CO should notify the program official for appropriate remedial actions.

h. *Detailed and Lump Sum Estimates and IGCE Structure.* The complexity of an IGCE depends on the nature and dollar value of the requirement, and an IGCE could be a detailed cost estimate or a lump sum estimate. Detailed estimates encompass an analysis and estimation for individual cost elements (i.e., direct labor, material, overhead, other direct costs, general and administrative expense, and profit). In contrast, the lump sum estimate projects cost or price on a “bottom line” basis. Lump sum estimates may be useful when the price of an item or service or real property acquisition can be determined without examining individual cost elements, such as when acquiring commercial items or land. The program official determines whether the IGCE should be developed as a lump sum estimate, detailed cost estimate, by contract line item number (CLIN), or by work breakdown structure (WBS). The structure used for the IGCE should track directly to the proposed CLIN structure used in the SIR to allow for valid comparisons in proposal cost and price analyses.

i. *Cost Estimates by Work Breakdown Structure (WBS).* Cost estimates by WBS provide detailed cost estimates for each activity in the WBS and may include vendor quotes or catalog prices for materials and engineering labor estimates.

j. *Market Research and Analysis.* Market research and analyses may be used to collect current cost information.

k. *Cost Estimation.*

(i) Cost estimation is a field of practice that can be simple to complex, depending on the requirement. Cost estimation methods for major system, facilities, and equipment acquisitions are complex and require defined requirements, extensive market research and expert assistance.

(ii) Different approaches are used to make cost estimates. The cost estimator decides the appropriate approach and it will vary depending on the requirement, amount of data that the estimator has about the item or service to be estimated and the time frame for completion of the estimate. There are five terms used within the cost analysis community to describe the usual methods of developing estimates: analogy, parametric, expert opinion, engineering and actual cost (extrapolation). There are many Government and private sector publications, models, and tools available on cost estimation. Listed below are several resources available for estimating costs:

DoD Contract Pricing Reference Guide Volume I: Chapter 6.1 and Chapter 1.1

NASA Parametric Cost Estimating Handbook

U.S. Army Cost Analysis Manual

NASA Cost Estimating Handbook

(iii) Detailed information on elements included in a Cost Estimate and a template for preparing an IGCE are available in the Appendix, Appendices 2 and 3.

3 Cost Accounting Standards Revised 9/2020

a. *Applicability.* Full or modified cost accounting standards (CAS) coverage, as appropriate, applies to all cost-type contracts and subcontracts. Categories of contracts and subcontracts exempt from all CAS requirements include:

- (1) Negotiated contracts and subcontracts not in excess of \$2,000,000. For purposes of this arrangement, an order issued by one segment to another must be treated as a subcontract (Policy 3.2.3.5);
- (2) Contracts and subcontracts with small businesses;
- (3) Contracts and subcontracts with foreign governments or their agents or instrumentalities or (insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned) any contract or subcontract awarded to a foreign concern;
- (4) Contracts and subcontracts in which the price is set by law or regulation;
- (5) Firm fixed price and fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred), time-and- materials, and labor-hour contracts and subcontracts for acquisition of commercial items;
- (6) Contracts or subcontracts of less the \$7.5 million, provided that at the time of award the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts at \$7.5 million or greater;

(7) Contracts and subcontracts to be executed and performed outside the United States, its territories, and possessions;

(8) Contracts for real property; and

(9) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

b. *Contract Requirements.* A CAS-covered contract may be subject to either full or modified CAS coverage.

(i) Modified CAS coverage applies to contractor business units that received less than \$50 million in net CAS-covered awards in the immediately preceding cost accounting period. Modified CAS coverage only requires that the business unit comply with the following standards:

a. 401, Consistency in Estimating, Accumulating and Reporting Costs

b. 402, Consistency in Allocating Costs Incurred for the Same Purpose

c. 405, Accounting for Unallowable Costs

d. 406, Cost Accounting Period

(ii) Full CAS coverage requires the business unit (as defined in CAS 410-30(a)(2)) comply with all of the CAS in effect on the contract award date, or if required to submit certified cost or pricing data, on the date of the certification, as well as any CAS (or modifications) which become applicable in the future. Full CAS coverage applies to contractor business units that:

a. Received a single CAS-covered contract award, including option amounts, or \$50 million or more; or

b. Received \$50 million or more in CAS-covered contract awards during the immediately preceding cost accounting period.

c. *CAS Administration.* The cognizant CO will perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by another CO. Within 30 days after the award of any new contract or subcontract subject to CAS, the CO, contractor, or subcontractor making the award should request the cognizant CO to perform administration for CAS matters. This is one of the duties of the Financial Administrative Contracting Officers (FACO) for those contractors who are under the cognizance of the FAA.

d. *Waiver.* In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of AMS Clauses 3.2.3-2, Cost Accounting Standards, and 3.2.3-3, Disclosure and

Consistency of Cost Accounting Practices. If the CO determines that it is impractical to obtain the materials, supplies, or services from any other source, the CO should prepare a request for waiver.

e. Responsibilities.

(1) The CO is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the screening information request. The CO ensures that the offeror has made the required certifications and that required Disclosure Statements are submitted.

(2) The CO should not award a CAS-covered contract until the FACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect FAA interest, the CO waives the requirement for an adequacy determination before award. In this event, a determination of adequacy should be required as soon as possible after the award.

(3) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(4) The cognizant FACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

f. Determinations.

(1) *Adequacy Determination.* The contract auditor will conduct an initial adequacy review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and will report the results to the cognizant FACO. The FACO will determine whether or not it adequately describes the offeror's cost accounting practices, based on the recommendation of the auditor. If the FACO identifies any areas of inadequacy, the FACO should request a revised Disclosure Statement. If the Disclosure Statement is adequate, the FACO should notify the offeror in writing, with copies to the auditor and FACO. The notice of adequacy should state that a disclosed practice will not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the FACO should furnish the contractor notification of adequacy within 30 days after the Disclosure Statement has been received by the FACO.

(2) *Compliance Determination.* After the notification of adequacy, the auditor must conduct a detailed compliance review to determine whether or not the disclosed practices comply with cost principles and the CAS and will advise the CO of the results. The CO should take action regarding noncompliance with CAS. The CO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with cost principles should be processed separately, in accordance with normal administrative practices.

g. Subcontractor Disclosure Statements.

(1) When FAA requires determinations of adequacy, the FACO cognizant of the subcontractor will provide such determination to the FACO cognizant of the prime contractor or next higher

tier subcontractor. FACO's cognizant of higher tier subcontractors or prime contractors cannot reverse the determination of the FACO cognizant of the subcontractor.

(2) The agency head may determine that it is not practical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. The agency head must, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

h. *Changes to Disclosed or Established Cost Accounting Practices.* Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining whether amounts of cost are material, the following criteria will be considered by the CO where appropriate; no one criterion is necessarily determinative:

(1) *The absolute dollar amount involved.* The larger the dollar amount, the more likely that it will be material.

(2) *The amount of contract cost compared with the amount under consideration.* The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(3) *The relationship between a cost item and a cost objective.* Direct cost items, since the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.

(4) *The impact of Government participation.* Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives are with the Government.

(5) *The cumulative impact of individually immaterial items.* It is appropriate to consider whether such impacts:

(a) Tend to offset one another; or

(b) Tend to be in the same direction and hence to accumulate into a material amount.

(6) The cost of administrative processing of the price adjustment modification should be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

The FACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the FACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the FACO should inform the contractor that:

(1) FAA reserves the right to make appropriate contract adjustments if, in the future, the FACO determines that the cost impact has become material; and

(2) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

i. *Equitable Adjustments for New or Modified Standards.*

(1) *New or Modified Standards.*

(a) AMS clause 3.2.3-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The FACO ensures that the contractor's response to the notice is made known to the CO.

(b) Contracts and subcontracts containing AMS clause 3.2.3-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded subject to full CAS coverage before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing AMS clause 3.2.3-2, Cost Accounting Standards, is awarded on or after the effective date of the new or modified standard.

(c) COs should encourage contractors to submit any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the Cost Accounting Standards Board. Any changes should be provided to the FACO for adequacy and compliance determinations.

(2) *Accounting Changes.*

(a) AMS clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(b) The FACO will request the cognizant auditor to review the proposed change concurrently for adequacy and compliance. If the change meets both tests, the FACO will notify the contractor and may request submission of a cost impact proposal or a report of general dollar magnitude. However, if the practice is not yet being performed, it may not be able to be tested for compliance.

(3) *Contract Price Adjustments.*

(a) The FACO should promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The FACO should invite COs from other agencies to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by \$10,000 or more. At the conclusion of negotiations, the FACO will:

(i) Inform the COs of affected contracts so the COs may execute supplemental agreements to the contracts;

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and COs of other agencies having prime contracts affected by the negotiation (those agencies execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the CO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum will serve as the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(b) If the parties fail to agree on the cost or price adjustment, the FACO may make a unilateral adjustment, subject to contractor appeal.

(4) Remedies for Contractor Failure to Make Required Submissions.

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO then informs the COs who may withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

j. Noncompliance with CAS Requirements.

(1) Determination of Noncompliance.

- (a) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the FACO makes an initial finding of compliance or noncompliance and advise the auditor.
- (b) If an initial finding of noncompliance is made, the FACO immediately notifies the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.
- (c) If the contractor agrees with the initial finding of noncompliance, the FACO reviews the contractor submissions required by paragraph (a) of AMS clause 3.2.3-5, Administration of Cost Accounting Standards.
- (d) If the contractor disagrees with the initial noncompliance finding, the FACO reviews the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. If the FACO determines that the contractor's practices are in noncompliance, a written explanation is provided as to why the FACO disagrees with the contractor's rationale. The FACO notifies the contractor and the auditor in writing of the determination. If the FACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, are followed.

(2) Accounting Changes.

- (a) AMS Clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.
- (b) The FACO reviews the proposed change concurrently for adequacy and compliance. If the description of the change meets both tests, the FACO notifies the contractor and request submission of a cost impact proposal.

(3) Contract Price Adjustments.

- (a) The FACO requests that the contractor submit a cost impact proposal within the time specified in AMS Clause 3.2.3-5, Administration of Cost Accounting Standards.
- (b) Upon receipt of the cost impact proposal, the FACO follows the procedures in subparagraph (3) (a) under above paragraph j. "Equitable Adjustments for New or Modified Standards". In accordance with the AMS Clause 3.2.3-2, Cost Accounting Standards, the FACO must include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest must be computed from the date of overpayment to the time the adjustment is affected. If the costs were incurred

and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest should be computed pursuant to AMS Clause 3.3.1-9, Interest.

(4) Remedies for Contractor Failure to Make Required Submissions.

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, should estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO should inform the COs who may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

(c) If the FACO determines that there is no material increase in costs as a result of the noncompliance, the FACO notifies the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the FAA, the provisions of AMS Clause 3.2.3-2, Cost Accounting Standards and/or AMS Clause 3.2.3-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

k. Voluntary Changes.

(1) General.

(a) The contractor may voluntarily change its disclosed or established cost accounting practices.

(b) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the CO determines that the change is desirable and not detrimental to the interest of FAA.

(2) Accounting Changes.

(a) AMS Clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to notify the FACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(b) The FACO reviews the proposed change concurrently for adequacy and compliance. If the description of the change meets both tests, the FACO notifies the contractor and requests submission of a cost impact proposal.

(3) Contract Price Adjustments.

(a) With the assistance of the auditor, the FACO promptly analyzes the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by FAA. The FACO considers all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment are not considered.

(b) The FACO then follows the procedures in above subparagraph j, "Equitable Adjustments for New or Modified Standards."

(4) Remedies for Contractor Failure to Make Required Submissions.

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is appropriate, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

1. *Subcontract Administration.* When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the FACO cognizant of the subcontractor should make the determination and advise the FACO cognizant of the prime contractor or next higher tier subcontractor of his decision. FACOs cognizant of higher tier subcontractors or prime contractors should not reverse the determination of the FACO cognizant of the subcontractor.

4 Financial Administrative Contracting Officer (FACO) Revised 9/2020

a. *Definition.* Financial Administrative Contracting Officers (FACO) are FAA employees who perform financial administration, including system adequacy determination, forward pricing and year-end actual rate administration and negotiation, and cost allowability determination to companies whenever the FAA is the cognizant agency.

b. *Roles and Responsibilities.*

- (1) Establish billing rates, make forward pricing rate recommendations, negotiate forward pricing rate agreements, and negotiate final indirect rates for cost-reimbursement contracts with companies over whom FAA has cognizance;
- (2) Make final determinations on adequacy of contractor accounting systems;
- (3) Determine the contractor's compliance with Cost Accounting Standards (CAS) as applicable;
- (4) Determine the allowability of cost suspended or disapproved, direct suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved;
- (5) Issue Notices of Intent to disallow or not recognize costs;
- (6) Negotiate advance agreements applicable to treatment of certain costs; and
- (7) Send letter(s) to contractor, contracting officers and affected external agencies notifying them of FACO actions, recommendations, negotiations as appropriate.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Appendix Revised 10/2007

1 Appendix - Instructions for Submitting Certified Cost/Price Proposals for Products, Services, or Construction Revised 9/2020

INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN CERTIFIED COST OR PRICING DATA ARE REQUIRED

Note 1. There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer (CO) or an authorized representative. As later information comes into the offeror's possession, it should be submitted promptly to the CO in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2. By submitting the offeror's proposal, the offeror grants the CO or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. GENERAL INSTRUCTIONS

A. The offeror must provide the following information on the first page of the offeror's pricing proposal:

- (1) Solicitation, contract, and/or modification number;
- (2) Name and address of offeror;
- (3) Name and telephone number of point of contact;
- (4) Name of contract administration office (if available);
- (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);
- (6) Proposed cost; profit or fee; and total;
- (7) Whether the offeror will require the use of Government property in the performance of the contract, and, if so, what property;
- (8) Whether the offeror's organization is subject to cost accounting standards; whether the offeror's organization has submitted a Cost Accounting Standards Board (CASB) Disclosure Statement, and if it has been determined adequate; whether the offeror have been notified that the offeror are or may be in noncompliance with the offeror's Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with the offeror's disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with the offeror's established estimating and accounting principles and procedures and FAA Cost Principles, and, if not, an explanation;

(9) The following statement:

"This proposal reflects our estimates and/or actual costs as of this date and conforms to the instructions contained in the Appendix D1 to AMS Guidance T3.2.3, 'Cost and Price Methodology.' By submitting this proposal, we grant the CO and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price."

(10) Date of submission; and

(11) Name, title and signature of authorized representative.

B. In submitting the offeror's proposal, the offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, the offeror must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, the offeror must submit, with the offeror's proposal, certified cost or pricing data (that is, data that are verifiable and factual and otherwise as defined in FAA AMS Appendix C. The offeror must clearly identify on the offeror's cover sheet that certified cost or pricing data are included as part of the proposal. In addition, the offeror must submit with the offeror's proposal any information reasonably required to explain the offeror's estimating process, including

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

D. The offeror must show the relationship between contract line item prices and the total contract price. The offeror must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. The offeror must furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

E. When more than one contract line item is proposed, the offeror must also provide summary total amounts covering all line items for each element of cost.

F. Whenever the offeror have incurred costs for work performed before submission of a proposal, the offeror must identify those costs in the offeror's cost/price proposal.

G. If the offeror has reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal the offeror must submit a Certificate of Current Cost or Pricing Data as follows:

(1) Certificate

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the CO or to the CO's representative in support of [∗] are accurate, complete, and current as of [∗∗]. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

[Offeror insert the following information.]

Firm _____

Signature _____

Name _____

Title _____

Date of execution [*** _____]

**Offeror identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., SIR No.)*

*** Offeror insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.*

**** Offeror insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.*

(End of certificate)

(2) The certificate does not constitute a representation as to the accuracy of the offeror's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the offeror had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the offeror's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(3) The CO and offeror are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the offeror to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the offeror's or a subcontractor's organization on matters significant to offeror management and to FAA will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(4) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the offeror's proposal.

(5) If certified cost or pricing data are requested by FAA and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data and must not be certified in accordance with this subsection.

II. COST ELEMENTS

Depending on the offeror's system, the offeror must provide breakdowns for the following basic cost elements, as applicable:

A. Materials and services. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of the offeror's own certified cost or pricing data submissions. Submit the subcontractor certified cost or pricing data as part of the offeror's own certified cost or pricing data as required in subparagraph IIA (2) below. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

(1) Adequate Price Competition. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the offeror, explain the pricing method.

(2) All Other. Obtain certified cost or pricing data from prospective sources (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of the offeror's cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract or purchase order that is the lower of either \$10,000,000 or more, or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime offeror's proposed price. The CO may require the offeror to submit certified cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime offeror's Certificate of Current Cost or Pricing Data. The prime offeror is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of the offeror's analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included along with the offeror's own certified cost or pricing data submission, as part of the offeror's own certified cost or pricing data. The offeror must also submit any other certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. Direct Labor. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. Indirect Costs. Indicate how the offeror have computed and applied the offeror's indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. Other Costs. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. Royalties. If royalties exceed \$1,500, the offeror must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the CO, a copy of the current license agreement and identification of applicable claims of specific patents.

F. Facilities Capital Cost of Money. When the offeror elects to claim facilities capital cost of money as an allowable cost, the offeror must submit form "Contract Facilities Capital and Cost of Money." (see AMS Procurement Forms). The offeror must show the calculation of the proposed amount.

III. FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES

A. New Contracts (including letter contracts)

(1)	(2)	(3)	(4)
COST ELEMENTS	PROPOSED CONTRACT ESTIMATE- TOTAL COST	PROPOSED CONTRACT ESTIMATE- UNIT COST	REFERENCE

Column Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in the offeror's judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them.

(3) Optional, unless required by the CO.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims.

(1) COST ELEMENTS	(2) ESTIMATED COST OF ALL WORK COMPLETED	(3) COST OF DELETED WORK ALREADY PERFORMED	(4) NET COST TO BE DELETED	(5) COST OF WORK ADDED	(6) NET COST OF CHANGE	(7) REFERENCE

Column Instructions

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if the contractor desires to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter the contractor's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached a supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

2 Appendix – Developing A Detailed Independent Government Cost Estimate, for Products, Services, or Construction Revised 9/2020

- (1) *Developing a Detailed Cost Estimate.* An IGCE should be independently prepared by a subject matter expert(s). To begin, the estimator should perform a detailed analysis of the requirement. The estimator should be familiar with the market for the item, including prior prices, inflation, market conditions, quantity, existing and emerging technologies, and substitutions. The estimator should be able to explain clearly the rationale used to develop the estimate and document the results. The estimator should list any assumptions, methodology used, and reference material used in developing the estimate.

Detailed Cost Estimate – Standard Elements. The following description of standard cost elements used in a detailed estimate is intended to assist in the preparation of a detailed IGCE. A sample format for a detailed cost estimate for products, services, or construction is in Appendix 3.

a. *Estimating Labor Hours*

- (i) Labor costs are usually the most significant part of the cost estimate for a contract. Direct labor is the labor directly applied to the task or project performed under a contract. Estimating hours for individual labor categories may be achieved using one or a combination of several techniques.
- (ii) Evaluating historical actual cost data gathered from FAA contracts for similar goods or services to estimate future requirements. The comparison between past and future items or services can be accomplished at a summary or task level. Many companies keep detailed cost records at the task level, which may be utilized if FAA has access to these records. When using this method consider aberrations that could skew the estimate. Consider also possible reductions in labor hours resulting from improvement from experience. This reduction can be estimated using learning curve theories.
- (iii) Labor standards may be used to estimate labor hours for manufacturing or repetitive functions. Labor standards are developed from data within the company, data published by trade associations, and data gathered from various other reference sources. For example, a company may determine that to produce a widget requires a standard of 12 hours of an engineer's time. This means that on average 12 engineer hours are needed to produce one widget; the actual time may vary from widget to widget.
- (iv) Estimates based on the professional experience and judgment of engineers and managers may be used to estimate labor hours, but it is the least accurate approach to estimating. Determining the proper mix of labor categories is important to make sure that the type of labor as well as the skill level of workers is appropriate for the work to be performed.

(v) Labor hours may vary from year to year depending on the goods or services acquired. Estimated hours should be adjusted when more or less work is anticipated in different years.

(vi) The productive hours for full-time contractor personnel should account for the anticipated vacations, holidays, sick days, and other administrative days. The number of potential work hours in a year is 2,080 (40 hours per week X 52 weeks per year); from the 2,080 hours estimated hours for vacation time (e.g. 120 hours), holidays (e.g. 80 hours), and sick leave (e.g. 40 hours) should be deducted (2,080 hours – 120 vacation hours – 80 holiday hours – 40 sick leave hours = 1,840 productive or direct hours).

Documenting the methods used to estimate labor hours is essential to support the independent government cost estimate. This information must be included in the IGCE narrative. Maintain copies of all source information.

b. *Estimating Labor Rates.* Estimates for labor rates may be derived from many sources including the following:

(i) Historical trends on FAA contracts for similar goods or services (be sure to determine if the labor rates are for direct labor or fully-loaded rates that include overhead, general and administrative, and profit) such as the Electronic FAA Accelerated and Simplified Tasks (eFAST), and the NAS Implementation Support Contract (NISC).

(ii) Labor rates for similar services from General Services Administration (GSA) Federal Supply Schedules (FSS), Bureau of Labor Statistics (BLS), Office of Personnel Management (OPM) for comparison to federal employee salaries, and private surveys of labor rates may be used. Be sure to determine if the labor rates are for direct labor or fully-loaded rates that include overhead, general and administrative, and profit.

(iii) Geography may influence labor rates. Work locations should be considered because labor rates vary significantly by location for the same labor skills.

(iv) When the potential contractor is known (such as in a single source or contract modification situation) forward pricing rate agreements (FPRA) with the federal government (often through FAA or Defense Contract Management Agency (DCMA)) may be available and should be used to support estimated labor rates.

(v) In the situation of a known contractor, a comparison of labor rates among FAA contracts should be performed; that is checking the labor rates with the labor rates on other FAA contracts (such as eFAST and NISC) for the same

labor categories by the same contractor. This comparison avoids paying higher rates for the same labor categories by the same contractor for similar work.

(vi) Labor rates for future periods may be estimated by performing a trend analysis of past labor rates on similar projects, or by escalating labor rates. Escalation must be substantiated by a recognized source such as IHS Global Insight (available on the FAA website) or Bureau of Labor Statistics indices (Consumer Price Index or Producer Price Index).

(vii) Estimates for exempt employees may be estimated for positions performing similar duties covered in Office of Personnel Management (OPM) position descriptions (PD) for general schedule (GS) or wage grade (WG) employees. For example, if an information technology management analyst was required, using OPM's "position classification" worksheet for a series GS-2210 for an information technology management analyst, following the worksheet instructions, the required analyst may be rated as a GS-14 employee equivalent. The salary tables published by OPM states that a GS-14, at a step 5 earns \$106,000 per year or \$50.95 per hour. This figure could be used as the basis for estimate.

(viii) Estimates for non-exempt labor for services and construction are available from the Department of Labor wage determinations provided under the provisions of the Service Contract ~~Act~~[Labor Standards](#) and the Davis Bacon Act. A non-exempt employee covered by one of these acts must be paid no less than the rate of pay listed in the wage determination. Examining the list may help in determining the appropriate labor categories.

Documenting the methods used to estimate labor rates is essential to support the independent government cost estimate. This information must be included in the IGCE narrative. Maintain copies of all source information.

c. Estimating Indirect Costs.

(i) The following definitions are provided for indirect costs:

<u>Terms</u>	<u>Definitions</u>
Indirect Cost	Any cost that cannot be <i>directly</i> identified with a single final cost objective (i.e. one contract) but can be identified with multiple final cost objectives (i.e. multiple contracts or the overall business).
Fringe Benefit Expenses	Costs of employee benefits – health insurance, vacation, as well as payroll taxes. These costs may be included in Overhead, rather than being a separate rate

Overhead Expenses	Costs benefiting more than one contract, such as supervision, training, and professional membership fees
General and Administrative (G&A) Expenses	Expenses that benefit the business as a whole, such as executives, accounting, and legal.
Material Handling Rate	Costs associated with ordering, receiving, inspecting, and shipping materials even when purchased for FAA at cost. Costs associated with subcontracts, including subcontract management
Facilities Capital Cost of Money (FCCM)	FCCM is an imputed cost that represents the cost to the contractor employing capital when investing in facilities or assets under construction that benefit FAA.
Indirect Cost Pool	An indirect cost pool is a logical grouping of incurred costs identified with multiple final cost objectives.
Allocation Base	The costs over which the indirect rates are spread (the denominator in the indirect rate calculation). The allocation base and the indirect costs in the associated pool must have a causal/beneficial relationship.

(ii) When the potential contractor is known (such as in a single source or contract modification situation) forward pricing rate agreements (FPRA) with the federal government (often through FAA or Defense Contract Management Agency (DCMA)) may be available and must be used to support estimated indirect rates.

a. There may also be a forward pricing rate recommendation (FPRR) available, if no FPRA. This may come from FAA, DCMA, or the Defense Contract Audit Agency (DCAA).

(iii) Understanding the composition of each indirect cost or overhead pool is important to ensure proper treatment of costs and to avoid duplication. If a cost estimate contains fully loaded rates, fringe benefits, overhead, G&A, and fee should already be included. Additional overhead should not be applied to avoid over estimating the cost.

d. *Material Overhead.* Material overhead or material handling includes the expenses associated with acquiring, transporting, receiving, inspecting, handling, and storing materials. Different options exist for collecting and allocating indirect material-related costs. Because material costs can vary significantly from contract to contract, a separate pool ensures that overhead costs are charged commensurately with the material cost in the contract. This pool often contains subcontract expenses, as well.

e. *Labor Overhead.*

(i) Labor overhead includes:

- a. Indirect labor consisting of supervision, inspection, maintenance, custodial, and other personnel whose labor is not charged directly to a production or operation;
- b. Costs associated with labor such as Social Security, unemployment taxes, and fringe benefits, if not in a separate indirect cost pool;
- c. Indirect supplies such as small tools and janitorial supplies; and
- d. Fixed charges such as depreciation, insurance, rent, and property taxes.

(ii) Overhead may vary significantly if the work is being performed on-site (contractor's location) or off-site (government's location). Off-site work normally is lower because the contractor does not need to maintain a building and avoid costs such as utilities.

(iii) Labor overhead is often separated by labor function such as engineering and manufacturing overhead.

f. *Fringe Benefits Overhead.* Contractors often have a separate pool for fringe benefits. Fringe benefits may include:

- (i) Vacation leave;
- (ii) Sick pay;
- (iii) Holidays;
- (iv) Health Insurance;
- (v) Payroll taxes; and
- (vi) Supplemental unemployment benefits.

g. *General and Administrative (G&A) Expense.*

(i) General and administrative costs typically include labor for corporate officers, clerical personnel, accountants, human resources personnel, purchasing agents, and attorneys. It also includes the cost of corporate level equipment, office supplies, utilities, interest expense, and legal costs.

(ii) The G&A allocation base one of three groups of costs:

- a. Total cost input (TCI) is the preferred base to apply the G&A rate. The total cost input base includes all costs, both direct and indirect

(excludes profit). This approach must be used unless there is a reasonable basis to use one of the other approaches

b. Value-added cost input is total cost minus material and subcontract costs. Value-added is appropriate when the inclusion of material and subcontract costs would distort the G&A allocation. When material and subcontract costs are significant, the use of value-added G&A allocation may be a better measure of G&A expense than total cost input.

c. Single element cost input would use one cost element to allocate G&A expense. For example, the G&A rate would be multiplied by only the direct labor cost. This approach may be used when there are no other significant cost elements, or when other significant elements vary in the same proportion to total costs. This is the least preferred method.

h. *Material Costs.* The following approaches could support the estimated cost for materials:

(i) If the contract is a follow-on or is similar to another FAA contract, the purchase history of the costs of materials could be a basis for estimate. The IGCE narrative should explain the similarities between the needed material and the historical basis. The estimate must be supported with accounting records, vendor invoices, bills of material, or other documentation that can support a per unit cost of the items being acquired. Any modification required for the new item being acquired should be estimated and supported.

(ii) Commercial items and catalog prices could be used to estimate material costs. Examples would include things like security cameras and doors. Copies of the catalogs used to estimate the material cost should be retained.

(iii) Vendor quotes can be used to estimate material costs. Vendor quotes from similar FAA contracts may be used to estimate material costs for the new acquisition.

(iv) Prices of some commodities may be regulated by law; in this case a copy of the law listing the particular commodity's price would support the cost estimate.

(v) The Producer Price Index (PPI) is an example of a widely used published index for escalation of material cost. The Bureau of Labor Statistics' PPI lists products by commodity groups and individual items. Trade and industry publications are other possible sources for obtaining appropriate data for material cost escalation.

i. *Escalation*. Future periods may be estimated by performing a trend analysis of past projects that are similar to the proposed work, or by using escalation factors. Escalation must be substantiated by a recognized source such as IHS Global Insight or the Bureau of Labor Statistics indices (Consumer Price Index or Producer Price Index).

j. *Other Direct Costs (ODC)*. Other direct costs (ODC) are costs charged directly to the contract that have not been included in proposed material, direct labor, indirect costs, or any other category of costs. Examples of ODC include special tooling, shipping expenses, reproduction costs, royalties, and federal excise taxes. All ODC should be listed in the IGCE, and supporting documentation retained and available for inspection by interested third parties.

k. *Travel Costs*. The program office must estimate the number of trips, the origin and destination for each trip, the length of stay, and the number of persons per trip before estimating the cost of travel. The purpose for the trips should be included in the IGCE narrative. Travel costs usually include cost of transportation, lodging, and meals and incidental expenses. The Federal Travel Regulation prescribed by the General Services Administration should be used to estimate lodging, meal and incidental expense, mileage for privately owned vehicles used for official travel, and so forth. Estimates for airfare and car rentals can be obtained using several travel web sites. (Note: make and retain copies of all source information used for travel estimates.)

l. *Profit or Fee*. Profit is the revenue in excess of the costs to perform a firm fixed price contract, and a fee is a flat charge paid in addition to costs on cost reimbursable contracts. The use of several forms may develop an estimated profit by using weighted-averages for different functions. These forms include DOT Form 4220 and DD Form 1547. A simpler approach is to apply a percentage to the total cost, excluding any directly reimbursable items. The percentage will vary according to risk factors, market factors, and location.

3 Appendix - Template for Detailed Independent Government Cost Estimate for Products, Services, or Construction Revised 9/2020

Detailed Independent Government Cost Estimate

Independent Government Cost Estimate for _____

Prepared by: _____

Office title and phone: _____

Date: _____

Direct Labor by Category	Hours		Hourly Rate		Total
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		X		=	
		X		=	
		X		=	
		X		=	
			Subtotal		
Labor Overhead (____ %) of labor					
Total Labor (Direct Labor + Labor Overhead)					
Direct Material					
Purchased Parts and Supplies					
Subcontracts					
Other Material					
Total Material					
Other Direct Costs					
Travel					
Consultants					
Special Equipment					
Other					
Total Other Direct Cost					
TOTAL DIRECT COST = (Labor + Material + Other Direct Cost)					
GENERAL AND ADMINISTRATIVE EXPENSE = (____ %) X Total Direct Cost					
				Subtotal	
FEE/PROFIT = (____ %) X (Direct Cost + General and Administrative)					
TOTAL ESTIMATED COST					

Narrative for basis of estimate attached

Section Revised:

3.2.4 A 9 – Options

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.2.4 - Types of Contracts Revised 7/2009

A Types of Contracts Revised 7/2007

1 General Considerations Added 7/2007

2 Fixed-Price Revised 9/2020

3 Cost-Reimbursement Revised 10/2019

4 Incentive Contracts Revised 7/2009

5 Indefinite Delivery Revised 7/2019

6 Time-and-Materials / Labor-Hour Revised 7/2017

7 Letter and Ceiling Priced Contracts Revised 7/2007

8 Multi-year Contracting Revised 7/2007

9 Options ~~Added 7/2007~~ Revised 10/2020

10 Basic Agreement Revised 7/2007

11 Basic Ordering Agreement Revised 7/2007

B Clauses

C Forms

D Appendices Revised 7/2008

- [1 Appendix - Sample Letter Contract](#) Revised 4/2012
 - [2 Appendix - Award Fee](#) Revised 7/2012
 - [3 Appendix - Sample Award Fee Performance Evaluation Plan](#) Revised 9/2020
 - [4 Appendix - Incentive Contracts Guide](#) Added 4/2010
-

T3.2.4 - Types of Contracts Revised 7/2009

A Types of Contracts Revised 7/2007

1 General Considerations Added 7/2007

- a. The Contracting Officer (CO) determines the type of contract. A variety of factors influence the CO's decision, such as nature and complexity of the requirement, degree to which requirements can be described, performance period, need for incentives, urgency, market conditions, industry practices, or procurement history.
- b. Circumstances may change during implementation of a large program, a series of contracts, or a single long-term contract, and a different contract type may be appropriate in later periods than that used at the outset. Also, a combination of contract types may be appropriate for different aspects of a requirement under one contract award.
- c. The CO uses sound judgment when selecting a contract type. Depending on the circumstances, it may be a matter for communication with vendors because contract price is closely related to contract type. The CO's objective should be to choose a contract type and price that will result in reasonable contractor risk and ensure efficient and economical contractor performance.
- d. Performance requirements must be realistic, manageable, and within the control of the parties to the contract. The procurement team (CO, program official, legal counsel, and other staff) should, to the extent possible, assess and discuss contract performance risks and ensure contract requirements and terms are clear. Contract terms must be reasonable to both FAA and the contractor.

2 Fixed-Price Revised 9/2020

- a. *General.* Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.
- b. *Firm Fixed-Price.*

(1) Description:

- (a) Provides for a price that is not subject to change regardless of the actual costs incurred by the contractor after award.
- (b) Places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss with maximum incentive to control costs and perform effectively.

(c) Imposes minimum administrative burden upon the contracting parties.

(2) Use When:

(a) Performance risk can be reasonably predicted or where risk is minimal.

(b) For commercial items or commercial-type products or other supplies or services on the basis of reasonably definite functional or detailed specifications.

(c) Available cost or pricing information permits realistic evaluation of probable costs of performance or the CO can establish fair and reasonable prices at the outset.

(d) The contractor is willing to accept a firm fixed price representing assumption of the risks involved.

(e) For real property transactions where the vendor is willing to accept a fixed rate over the entire contract term representing the rental value for the land or space. (See also T3.8.8.B.5 for Rent Payment Structure)

(3) Considerations:

(a) Contractor is responsible for cost control and associated risks.

(b) Careful evaluation of project requirements and the Offeror's price proposal must be made to ensure a meeting of the minds and ensure price does not include excessive allowance for risk.

c. Fixed-Price with Economic Price Adjustment.

(1) Description:

Same as fixed price, except provides for an upward or downward revision of the stated contract price based on the occurrence of specific conditions specified in the contract.

Adjustments are of three general types:

(a) Established prices. Increases or decreases from an agreed upon level in published or otherwise established prices of specific items or the contract end items. Normally restricted to industry-wide contingencies.

(b) Actual costs of labor or material. Increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance. Should be limited to contingencies beyond the contractor's control.

(c) Cost indexes of labor or material. Increases or decreases in specified costs of labor or material cost standards or indexes that are specifically identified in the contract.

(d) Actual costs of taxes. Increases or decreases in specified costs associated with state or local taxes during the term of any real property contract.

(2) Use When:

There is considerable doubt concerning the stability of the market or labor conditions that will exist during an extended contract period (i.e., during periods of high or significant fluctuations in inflation), and where the performance period is greater than one year.

(3) Considerations:

(a) Risk for contractor reduced.

(b) Important to ensure that the contingency (typically an index published by the Bureau of Labor Statistics) is a reliable indicator of the contractor's probable changes in cost. For example, the Employment Cost Index (ECI) is generally preferable to the Consumer Price Index (CPI-U) if labor costs are the primary component of the contractor's price. For real property contracts, the Cost of Living Index found in the U.S. Department of Labor Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, will be incorporated into the fixed price amount and paid in accordance with the terms of the contract.

(c) Should not be used unless it is necessary either to protect the contractor and the FAA against significant fluctuations in labor or material costs, or market conditions.

(d) In contracts that do not require submission of cost or pricing data, the CO should obtain adequate information to establish the base level from which an adjustment may be made and may require verification of data submitted.

d. *Firm Fixed-Price, Level-of-Effort.*

(1) Description:

(a) Requires a contractor to provide a specified level of effort, over a stated period of time, for work that can be stated only in general terms, and the FAA pays the contractor a fixed dollar amount.

(b) Suitable for investigation or study in a specific research and development area. The output of the contract is usually a report showing the results achieved through application of the required level of effort.

(2) Use When:

(a) The work required cannot otherwise be clearly defined.

(b) The required level of effort is identified and agreed upon in advance.

(3) Considerations:

(a) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort.

(b) Payment is based on the effort expended rather than the results achieved.

e. *Fixed-Price Incentive.*

(1) Description:

(a) Provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost.

(b) The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts are firm target and successive targets.

(2) Use When:

(a) A firm-fixed price is not suitable.

(b) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance.

(c) The performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work, if the contract also includes incentives on technical performance and/or delivery.

(d) Billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that the final negotiated cost will be substantially different from the target cost.

(3) Considerations:

(a) Places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss with maximum incentive to control costs and perform effectively.

(b) The final price is subject to a price ceiling, negotiated at the outset. See guidance on Firm Target and Successive Target contracts for additional considerations.

f. *Fixed-Price Incentive (Firm Target)*.

(1) Description:

(a) Specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are negotiated at the outset.

(b) Price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

(c) When performance is completed, the parties negotiate the final cost, and the final price is established by applying the formula.

(2) Use When:

(a) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision.

(b) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(3) Considerations:

(a) Profit varies inversely with the cost; therefore this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss.

(c) The CO should specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

g. *Fixed-Price Incentive (Successive Targets)*.

(1) Description:

(a) Specifies the following elements, all of which are negotiated at the outset:

(i) Initial target cost;

(ii) Initial target profit;

(iii) Initial profit adjustment formula;

(iv) The production point; and

(v) A ceiling price.

(b) The profit adjustment formula to be used for establishing the firm target profit includes a ceiling and floor for the firm target profit.

(2) Use When:

(a) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award.

(b) Sufficient information is available to permit negotiation of initial targets.

(c) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either a firm-fixed price or firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive.

(d) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, and negotiation of final costs.

(e) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(3) Considerations:

(a) Initial profit adjustment formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.

(b) A ceiling price is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

(c) When the specified production point is reached, the parties negotiate the firm target cost giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the stated formula. The parties may then negotiate a firm-fixed price, using the firm target cost plus the firm target profit as a guide; **OR** negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by the formula, as under the fixed-price (firm target) contract.

h. *Fixed-Price Award Fee.*

(1) Description:

- (a) Provides for a price not subject to any adjustment on the basis of the contractor's actual costs in performing the contract and for a fee consisting of an award amount that the contractor may earn in whole, in part, or not at all during performance.
- (b) Award fee is sufficient to provide motivation for excellence in such areas as quality, timeliness, etc.
- (c) The amount of the award fee to be paid is determined by the FAA's judgmental evaluation of the contractor's performance in terms of the discriminators stated in the contract. This determination is made unilaterally by the FAA and is not subject to the "Disputes" clause.

(2) Use When:

- (a) The work can be sufficiently defined to permit the use of a fixed-price contract and the CO believes the FAA can benefit by providing added incentives to encourage the contractor to perform beyond the minimum contract requirements.
- (b) The additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.
- (c) Multiple offices or functions may be support by the contract.

(3) Considerations

- (a) Probable profit included in the fixed price when establishing the award fee.
- (b) Contract contains an award fee determination plan which discusses the method the FAA will use to determine how much of the award fee may be paid to the contractor. The following topics are recommended:
 - (i) Performance discriminators (describes the specific areas of performance to be evaluated, and the weighting given to each area).
 - (ii) Frequency of evaluations, total award fee, and amount of fee allocated per performance evaluation period.
 - (iii) Process for making changes to the plan.

(iv) Termination (describes how the final period of evaluation will be treated should the contract be terminated).

3 Cost-Reimbursement Revised 10/2019

- a. *General.* Cost-reimbursement type contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the required work and establish a ceiling that the contractor may not exceed (except at its own risk) without the CO's approval. Cost-reimbursement contracts are appropriate when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

The CO must notify FAA Cost/Price Analysis Services (AAP-500) when awarding all cost reimbursable contracts. This requirement includes task orders and contracts with reimbursable CLINs over 15% of the total contract value for the purposes of maintaining a list of contracts required by AMS Policy to be audited.

b. *Cost.*

(1) Description:

A cost-reimbursement contract in which the contractor receives no fee.

(2) Use When:

- (a) Research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.
- (b) The contractor's accounting system is adequate for determining costs applicable to the contract.
- (c) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract.
- (d) The total value of the contract is high enough to justify the higher administrative costs when compared to other contract types.

(3) Considerations:

- (a) Appropriate FAA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.
- (b) Verifiable cost information is available.

(c) A ceiling price which the contractor may not exceed without the CO's approval.

(d) Allowable costs are determined according to FAA Cost

Principles. c. *Cost-Sharing*.

(1) Description:

A cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon share of its allowable costs.

(2) Use When:

(a) The contractor agrees to absorb a portion of the costs with the expectation of compensating benefits.

(b) The contractor's accounting system is adequate for determining costs applicable to the contract.

(c) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract.

(d) The total value of the contract is high enough to justify the higher administrative costs when compared to other contract types.

(3) Considerations:

(a) Appropriate FAA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

(b) Verifiable cost information is available.

(c) A ceiling price which the contractor may not exceed without the CO's approval.

(d) Allowable costs are determined according to FAA Cost

Principles. d. *Cost-Plus-Fixed Fee*.

(1) Description:

(a) Provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fee is a fixed dollar amount.

(b) For CPFF LOE contract, the fee is determined by the level of effort performed. The fixed fee may vary by a pre-determined amount or percentage of the total fixed fee available based on the level of effort, but not cost incurred.

(c) The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the scope of work to be performed under the contract.

(d) If the contract is incrementally funded, the CO should identify in all awards and modifications the portion of funding allocated to the fee.

(e) Typically written in either completion form or term form.

(f) Permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

(2) Use When:

(a) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

(b) The total value of the contract is high enough to justify the higher administrative costs when compared to another contract type.

(c) The contractor's accounting system is adequate for determining costs applicable to the contract.

(d) The level of effort required is unknown such as for the performance of research or preliminary exploration or study.

(e) The extra incentive of a cost plus award fee is not necessary, but payment of profit is still appropriate.

(3) Considerations:

(a) A contract ceiling price is established at award and the contractor may not exceed the ceiling without the CO's written approval.

(b) Costs are determined according to FAA Cost Principles.

(c) Contractor's accounting system is adequate for determining costs applicable to the contract.

(d) A Contractor may invoice the fee as a percentage of costs incurred, rather than a fixed dollar amount per invoice subject to the total Fixed Fee amount. If a Contractor invoices as a percentage of costs, the CO and COR must closely monitor the payment of

fee and ensure compliance with AMS Clause 3.2.4-6 Fixed Fee and its require fee withholding. The Contractor fee may be released for payment once all deliverables have been received and accepted by the COR.

(e) Fixed fee payments may also be structured subject to contract terms and conditions such as milestone payments. A percentage or amount of the total fixed fee is paid upon completion of specified milestones.

(f) Cost plus fixed fee does not provide fee incentives for superior performance.

(g) Generally less costly to administer from an administrative standpoint than cost plus award fee.

(h) May be completion or term. Completion form is preferred because of the differences in obligation assumed by the contractor. This forms states a definite goal or target and specifies an end product. If the work cannot be completed within the estimated cost, FAA may require more effort and increase the estimated cost but without an increase in fee.

(i) If term is used the contract should provide a specific level of effort within a definite time period. If FAA considers performance satisfactory, the fixed fee is payable at the expiration of the agreed upon period.

(j) For multiple award contracts, the CO should make a determination about splitting the potential work under the contract vehicle to determine the share of fixed fee. This type of award is not recommended for multiple award contracts as it is difficult to determine which work will go to which Contractor in advance.

e. Cost-Plus-Incentive Fee.

(1) Description:

(a) Provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.

(b) Specifies a target cost, target fee, minimum and maximum fees, and a fee adjustment formula.

(c) After contract performance, the fee payable to the contractor is determined in accordance with the formula.

(2) Use When:

(a) A cost-reimbursement contract is necessary and a target cost and fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(b) Development and test programs are required.

(c) Technical performance incentives may be included and it is highly probable that the required development of a major system is feasible and FAA has established its performance objectives, at least in general terms.

(3) Considerations:

(a) The fee adjustment formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs and decreases in fee below target fee when total allowable costs exceed target costs.

(b) The increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively.

(c) When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(d) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost.

(e) If a high maximum fee is negotiated, the contract must also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(f) Costs are determined according to FAA Cost Principles.

(g) Contractor's accounting system is adequate for determining costs applicable to the contract.

f. *Cost-Plus-Award Fee*.

(1) Description:

(a) Provides for a fee consisting of:

- (i) a base amount fixed at inception of the contract;
- (ii) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to motivate excellent performance; and

(iii) a performance evaluation plan that specifies the criteria for determining the award fee to be paid. Additional detailed guidance on developing a performance evaluation plan, measurable award fee criteria, calculating award fee, and other basic guidelines about administering cost-plus-award-fee contracts are in Appendices D-2 and D-3 of this Section.

(b) The amount of the award fee to be paid is based on FAA's judgmental evaluation of the contractor's performance. This determination is made unilaterally by FAA and is not subject to the "Disputes" clause.

(2) Use When:

(a) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

(b) The total value of the contract is high enough to justify the higher administrative costs when compared to another contract type.

(c) The contractor's accounting system is adequate for determining costs.

(d) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule.

(e) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides FAA with the flexibility to evaluate both actual performance and the condition under which it was achieved.

(3) Considerations:

(a) The CO should weigh the cost of higher contract administration costs against the expected benefit of selecting a cost-plus-award-fee contract.

(b) A ceiling price which the contractor may not exceed without the CO's approval is included.

(c) Costs are determined according to FAA Cost Principles.

(d) The CO must develop measurable award fee criteria to evaluate contractor performance. The CO evaluation must contain narrative comments as the bases for judging contractor performance, identifying specific contractor strengths, weaknesses and deficiencies.

(e) Contract contains an award fee determination plan which discusses the method FAA will use to determine how much the award fee will be paid.

(f) General topics of an award fee plan:

- (i) Performance discriminators must be clearly described as these are the bases for grading and scoring methods used to translate evaluation findings into recommended award fee amounts or ranges.
 - (ii) Frequency of evaluations, total award fee, and amount of fee allocated per performance evaluation period.
 - (iii) Process for making changes to the plan.
 - (iv) Termination (describes how the final period of evaluation will be treated should the contract be terminated).
- (g) Number of evaluation criteria and the requirements they represent may differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of a least minimum acceptable performance in all other areas.
- (h) Provide for evaluation at stated intervals during performance, so that the contractor is periodically informed of the quality of its performance.
- (i) Partial payment of fee should generally correspond to the evaluation periods.

g. Cost-Plus-Percentage of Cost.

Description: Provides for reimbursement of cost plus an agreed upon percentage of incurred cost as fee. The amount of fee increases as cost increases. This type of contract rewards inefficient and ineffective performance, or failure to control cost, with higher amounts of fee.

THIS CONTRACT TYPE IS PROHIBITED.

4 Incentive Contracts Revised 7/2009

a. General.

- (1) Incentive contracts are designed to obtain specific program objectives by establishing reasonable and attainable targets clearly communicated to the contractor, and by establishing incentives to motivate contractor performance and discourage inefficiency. The basic categories of incentive contracts are fixed-price incentive and cost-reimbursement incentive. Award-fee contracts are also a type of incentive contract.

(2) When predetermined, formula-type incentives on technical performance or delivery are included in a contract, increases in profit or fee are provided only for contractor achievement surpassing the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

b. *Cost Incentives.*

(1) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract should provide for other incentives without also providing a cost incentive (or constraint).

(2) Excluding cost-plus-award-fee contracts, incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides:

(a) Actual cost that meets the target will result in the target profit or fee;

(b) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(c) Actual cost that is below the target will result in upward adjustment of target profit or fee.

c. *Performance Incentives.*

(1) Performance incentives may be considered for specific product characteristics (*e.g.*, range, speed, maneuverability) or other specific elements of the contractor's performance. These incentives should relate profit or fee to results achieved by the contractor, compared with specified targets.

(2) To the extent practicable, positive and negative performance incentives should be considered for service contracts involving objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(3) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. The incentives on individual technical characteristics should be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(4) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. The contract should be as specific as possible in establishing test criteria (such as testing conditions,

instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(5) Because performance incentives present complex problems in contract administration, the CO should negotiate incentives in full coordination with Government engineering and pricing specialists.

(6) It is essential that the Government and contractor agree explicitly on the effect that contract changes (e.g., pursuant to the Changes clause) will have on performance incentives.

(7) The CO must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

d. *Delivery Incentives.*

(1) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (e.g., earliest possible delivery or earliest quantity production).

(2) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

e. *Structuring Multiple-Incentive Contracts.* A multiple-incentive arrangement should:

(1) Motivate the contractor to strive for outstanding results in all incentive areas; and

(2) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

f. *Checklist for Incentive Contracts.*

Pre-award:

- Was a review of incentive fee contracting at AMS Procurement Guidance T3.2.4.A.4 a.-

e. completed?

- Is it likely the incentive affects cost, schedules or quality in a positive way?
- Are there potential unintended negative consequences in the incentive on costs, schedules or quality?
- Is the incentive challenging and attainable?
- Is the incentive affordable for FAA?
- Are resources available to properly formulate and monitor the contract?
- Can risks and cost benefits be assessed?
- Can incentives be objectively measurable?
- Do incentives correlate to the desired results?
- What form should the incentive take?
- Was there market research and open communications with vendors in developing the incentive?
- Are there evaluation factors related to the incentive?
- Are multiple incentives (i.e., combination of cost, performance/delivery, or quality incentives) appropriate?
- Does the incentive fee plan provide clear direction on how the incentive fee will be applied and monitored?
- What is appropriate contract type - CPIF or FPI?
- Are there any goals where multiple incentives conflict?
- Does the incentive have the requisite limits?

Post-award:

- Is the incentive effective?
- Do incentive assumptions need to be reassessed?
- Are contractors being rewarded for simply meeting contract requirements?

- Is the incentive focused on the objective?
- How effective are the tools and processes being used to monitor the incentive?
- Is there a need to revise the incentive due to changes in requirements or contract developments?

5 Indefinite Delivery Revised 7/2019

a. *General.* There are three types of indefinite delivery contracts: definite quantity; requirements; and indefinite-quantity. An indefinite delivery contract permits flexibility in both quantity and delivery time, and in ordering products or services after requirements materialize. These contract types are appropriate when the exact times or exact quantities of future deliveries are not known at the time of contract award, and FAA wants a firm commitment from the contractor to accept all orders placed in accordance with the contract terms. Other considerations for indefinite delivery contracts include:

- (1) Contracts may provide for any appropriate cost or pricing arrangement.
- (2) Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate cost and pricing procedures.
- (3) Prices remain fixed for the duration of the contract unless specific provisions are included for price adjustments.
- (4) A separate public announcement is not required for orders placed under a requirements or indefinite quantity contract.
- (5) Contract schedule should include the names of organizations authorized to issue orders.
- (6) The contract may include provisions for placing oral, electronic, or facsimile orders. Funds should be properly obligated and oral orders confirmed in writing.
- (7) When determining which contract, cost and pricing arrangements to include, all justifications and approvals for such arrangements must be made and obtained prior to entering into the indefinite delivery contract.
- (8) The contract may include program management task orders. The determination to award program management task orders will be made on a case-by-case basis and driven by program requirements, scope, complexity, dollar value, and risk. Some factors that the program office may consider in its decision to award program management task orders include the following:
 - Major stakeholder visibility.

- Complexity of the procurement scope and impact on the program's mission.
- Overarching program oversight of individual projects/task orders.
- Centralized coordination with vendors in managing the overall technical requirements, performance monitoring, and status reporting across the program.

b. *Definite Quantity.*

(1) Description:

Provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(2) Use When:

(a) FAA can determine in advance that a definite quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead-time.

(b) The FAA's total requirements are known but the delivery schedule or locations are not known in advance.

(3) Considerations:

(a) Limits FAA's and the contractor's obligation to the quantity specified in the contract.

(b) May also contain provisions to order option quantities.

c. *Indefinite Quantity.*

(1) Description:

(a) Limits FAA's obligation to the minimum quantity specified in the contract.

(b) Provides for delivery of an indefinite quantity within stated limits, of specific products or services during a fixed period; with deliveries to be scheduled by placing orders with the contractor.

(c) Also known as a delivery order contract.

(2) Use When:

(a) The FAA cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period.

(b) The FAA does not wish to commit itself for more than a minimum quantity.

(c) A recurring need is anticipated.

(d) Funds for other than the stated minimum quantity are obligated by each delivery order, and not by the contract itself.

(3) Considerations:

(a) The schedule of items should include a realistic estimate of total orders to be placed during the contract term.

(b) Contract may include a maximum or minimum quantity that FAA may order under delivery order and the maximum that it may order during a specific period of time.

(c) The contract should contain a minimum quantity of supplies or services that the contractor may be required to deliver, if ordered. The minimum quantity should be more than nominal but should not exceed the amount that FAA is fairly certain to order.

(d) Making multiple awards may be beneficial. In making this determination, the CO should exercise sound business judgment as part of acquisition planning. The administrative cost of multiple contracts may outweigh any potential benefits.

(e) If multiple awards are anticipated, include a notice to offerors.

d. *Requirements Contract.*

(1) Description:

(a) Provides for filling all actual product or service requirements of designated government activities during a specified period with delivery or performance scheduled by placing orders with the contractor.

(b) Funds are obligated by each delivery order, not by the contract itself.

(c) Also known as a delivery order contract.

(2) Use When

(a) The FAA anticipates recurring requirements but cannot predetermine the precise quantities of products or services that designated FAA activities will need during a definite period.

(b) The contract states a realistic estimated total quantity.

(c) The estimate is based on the most current information available, such as previous requirements or consumption.

(3) Considerations:

(a) Estimated requirements are not a representation to an offeror or contractor that the estimated quantity will be ordered, or that conditions affecting requirements will be stable or normal.

(b) Contract may include a maximum limit of the contractor's obligation to deliver and the FAA's obligation to order.

(c) Contract may specify minimum/maximum quantities that the FAA may order under each individual order and the maximum it may order during a specified period of time.

(d) If contract is to acquire work on existing FAA property (e.g., repair, modification or overhaul), the schedule should specify that failure of FAA to furnish such items in the amounts or quantities described in the schedule as 'estimated' or 'maximum' will not entitle the contractor to any equitable adjustment in price under the FAA property clause of the contract.

6 Time-and-Materials / Labor-Hour Revised 1/2015

a. Description:

A time-and-materials (T&M) or labor-hour (LH) contract provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates. Fixed hourly labor rates include wages, overhead, general and administrative expenses, and profit. A T&M contract also includes provisions for acquiring materials at actual cost (and may include a handling fee).

b. Use When:

A T&M or LH contract may be used when no other contract type is suitable, and it is not possible at the time of award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

c. Considerations:

(1) *Justification.* The CO must document the basis for selecting a T&M or LH contract, including task orders placed against an ordering vehicle. This justification must explain:

(a) Why no other contract type is suitable;

(b) Why it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence;

(c) The market research conducted; and

(d) How the requirement has been structured to best allow for another contract type with less risk (such as fixed-price) to FAA in future procurements. This may include transitioning individual line items to fixed-price (for example, materials), while keeping other line items as T&M (for example, installation services).

(2) *Approval of Long Term Contracts.* The Chief of the Contracting Office must approve any T&M or LH contract with a total performance period of more than five years (base period plus options, or contracts extended by modification). The CO documents the basis for the performance period, includes this information in the T&M or LH justification required by paragraph c. (1) above, and sends to the justification to the COCO for approval. Non-T&M or LH contracts that have T&M or LH line items that are 15% of the contract price or less do not need COCO approval.

(3) *Ceiling.* T&M or LH contracts must include a ceiling price established at the time of contract award. There must be a documented relationship between the ceiling price established at the time of award and the amount of work expected to be performed. The CO must justify and document consistent with AMS Single-Source Selection Policy any ceiling price increase. As part of this justification and documentation, the CO must conduct an analysis of pricing and other relevant factors to determine if the ceiling increase is in the FAA's best interests. The CO also should consider if effort in excess of the ceiling price, where appropriate, should be completed using a fixed-price contract modification.

(4) *Labor Categories.* T&M or LH contracts should establish only those labor categories necessary for the required work. The program official and CO must jointly document the basis for selecting labor categories to be used. The contract should specify any minimum education, experience, and other qualifications required for each labor category.

(5) *Hourly Rates.* T&M or LH contracts must specify for each labor category, separate fixed hourly rates that include wages, overhead, general and administrative expense, and profit. For noncompetitive awards, the contract must specify fixed hourly rates for each labor category, whether performed by contractor personnel, subcontractor personnel, or employees of a division, subsidiary, or affiliate of the contractor under a common control.

(6) *Material Costs.*

(a) Materials are:

(1) Direct materials: Those materials that enter directly into the end product or are consumed in connection with the furnishing of the end product or service;

(2) Subcontracts: For supplies or incidental services for which there is not a labor category in the contract;

(3) Other direct costs: Includes incidental services for which there is not a labor category in the contract, travel, and computer usage charges; and

(4) Applicable indirect costs.

(b) Material costs are compensable only if the contract provides for such costs.

(c) When included as part of material costs, material handling costs (or fees) must include only costs excluded from the labor-hour rate. These costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures.

(7) *Monitoring.* T&M or LH contracts provide limited incentive for a contractor to control costs or efficiently use labor. FAA personnel must closely monitor a contractor's performance to ensure efficient work methods and adequate cost controls are in place. Methods of monitoring generally relate to the dollar value and risk associated with the contract, and may include:

(a) *Random Sampling.* Random sampling is a statistically based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable;

(b) *100% Inspection.* This surveillance/assessment type is preferred for those tasks that occur infrequently; including tasks that cannot be random sampled because the sample size for a small lot may exceed the lot size;

(c) *Periodic Surveillance.* Periodic sampling is similar to random sampling, but it is planned at specific intervals or dates; or

(d) *Customer Feedback.* Customer feedback is firsthand information from the actual users of the service.

7 Letter and Ceiling Priced Contracts Revised 7/2007

a. *General.* A letter contract is a preliminary contractual instrument that authorizes a contractor to immediately begin work, subject to negotiating a definitive contract. A letter contract should not be used for contract modifications. A ceiling priced contract authorizes a contractor to start performance before final agreement on contract price.

b. *Letter Contract.*

(1) Description:

- (a) Provides a preliminary authorization for the contractor to immediately begin work.
- (b) Includes a brief description of the work, performance period, and a limitation on the total funding amount that a contractor may expend and FAA will pay.
- (c) Contractor agrees to be bound by the AMS termination, changes and disputes provisions.

(2) Use When:

- (a) The FAA's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.
- (b) Emergency or other special situations for limited amounts.

(3) Considerations:

- (a) Should not be used to commit the FAA to a definitive contract in excess of the funds available at the time the letter contract is executed.
- (b) Should not be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

c. Ceiling Priced.

(1) Description:

- (a) A written contractual instrument that contains all required AMS provisions, except for final agreement on contract price or cost.
- (b) Contains all requirements for performance or delivery. (2) Use

When:

- (a) The FAA's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract price or cost is not possible in sufficient time to meet the requirement.
- (b) The ceiling priced contract contains the maximum price or cost to be negotiated; the contract type for the definitized contract; FAA's maximum liability pending

definitization; a definitization schedule; and a provision which permits the CO to determine a reasonable price or cost (subject to the disputes provisions).

(3) Considerations:

(a) Use of a ceiling-priced contract for a cost-reimbursement contract should not be construed to alter the obligation of the parties to complete performance of the cost type contract.

(b) The definitization schedule should include dates for submission of the contractor's price proposal, required cost or pricing data and, if required, make-or-buy and subcontracting plans; a date for the start of negotiations; and a target date for definitization.

(c) The definitization should be completed within 180 days after the date of the ceiling-priced contract or before completion of 40% of the work to be performed, whichever occurs first.

8 Multi-year Contracting Revised 7/2007

a. *Description.* Multi-year contracting is a special method of acquiring known requirements for supplies or services for up to five program years, without total program funding at the time of basic contract award. Funds are obligated only for the first program year's requirements. Contract performance after the first year is contingent on appropriations for each subsequent program year. If appropriations are not made, then FAA must cancel the contract and the contract may provide for a cancellation payment to the contractor. Multi-year contracts differ from multiple year contracts in that multi-year contracts obtain more than one year's requirement without establishing and having to exercise an option for each program year after the first.

b. *Multi-year Authority.* Specific legal authority authorizes or restricts FAA's use of multi-year contracts. Before planning a multi-year contract, the CO must obtain legal counsel's concurrence.

c. *Benefits.* Advantages of using multi-year provisions include to:

(1) Lower costs;

(2) Enhance standardization;

(3) Reduce administrative burden associated with contract award and administration;

(4) Ensure substantial continuity of production or performance, to avoid annual startup costs, pre-production testing costs, make-ready expenses, and phase-out costs;

(5) Stabilize contractor workforces;

(6) Avoid establishing quality control techniques and procedures for a new contractor each year;

(7) Broaden the competitive base, with opportunity for participation by contractors not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and

(8) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

d. *Considerations.* When deciding whether to use multi-year provisions, the CO should consider:

(1) There will be a continuing requirement consistent with current plans for the proposed contract period. The minimum need for the item to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, acquisition rate, and total quantities;

(2) The contract will require a substantial initial investment in plant or equipment, or there will be a substantial contingent liability for assembling, training, or transporting a specialized workforce;

(3) The contract will encourage competition and promote economies in operation;

(4) The contract will promote safety or efficiency of the National Airspace System and will result in reduced total costs;

(5) There is reasonable expectation that throughout the contemplated contract period FAA will request funding for the contract at the level required to avoid contract cancellation;

(6) There is a stable design for the item to be acquired and the technical risks associated with such item are not excessive; and

(7) There are realistic estimates of both cost of the contract and anticipated cost avoidance through the use of multi-year provisions.

e. *Services.* Fixed-price and fixed-price incentive contracts for the following services, and supplies related to those services, may be acquired using multi-year provisions:

(1) Operation, maintenance, and support of facilities and installations;

(2) Operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment;

(3) Specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training; and

(4) Base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

f. Multi-year provisions should not be used to acquire construction or real property.

g. Soliciting Offers and Pricing

(1) The CO may solicit separate offers for the current one-year program requirements alone and for the total multi-year program requirements. Separate offers allow the CO to determine which alternative provides the lowest unit price and whether there are potential savings from using multi-year provisions. When in FAA's best interest, the CO may solicit offers for the total multi-year requirements only.

(2) Multi-year contracts allow certain costs to be amortized over the entire contract quantity, resulting in identical (level) unit prices for all items or services. When level unit pricing is not in FAA's best interest, the CO may use variable unit pricing, provided that for competitive proposals there is a valid method of evaluation.

(3) Given the longer period of performance for a multi-year contract, the CO should consider risk when negotiating a profit or fee objectives and should consider financing arrangements that reflect contractor's cash flow needs.

h. Cancellation. If a multi-year contract is canceled, FAA should fairly compensate a contractor for the work done and for preparations made for the canceled portion of the contract. The specific dollar amount of "fair compensation" is only determined if the contract is actually canceled. The contractor submits a cancellation claim, the CO evaluates it, and the parties negotiate the "fair compensation," called the cancellation charge, which FAA will pay to the contractor. A cancellation charge is the amount of unrecovered costs that would have been recouped through amortization over the full term of the contract, including the term canceled. The cancellation ceiling is the maximum cancellation charge that the contractor can receive in the event of cancellation. For each point in time when the FAA could cancel the contract, there is a unique cancellation ceiling.

(1) Whether, or to what extent, cancellation provisions are included in multi-year contract depends on the circumstances. The CO may use modified cancellation provisions or exclude cancellation provisions when appropriate.

(2) If cancellation occurs, the contractor is entitled to payment in accordance with contract terms and conditions. The terms of cancellation should outline cancellation procedures, cancellation points in time, the way in which cancellation will be funded, types of costs to be included in the cancellation charge, and cancellation ceiling.

(3) Cancellation charges need not be funded before cancellation. The CO should determine whether to fund the cancellation ceiling or treat it as a contingent (unfunded) liability.

(4) All program years except the first are subject to cancellation. Each subsequent program year has a cancellation ceiling. Cancellation ceilings should exclude amounts for items included in prior program years. The cancellation ceiling for each program year is reduced in direct proportion to the remaining requirements subject to cancellation.

(5) Multi-year contracts may allow reimbursement of unrecovered non-recurring costs included in the price of canceled items to protect the contractor against loss resulting from cancellation.

(6) In determining cancellation ceilings, the CO should estimate reasonable pre- production or startup, labor learning, and other non-recurring costs to be incurred by an ‘average’ prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi- year requirements. Non-recurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, pre- production engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly training and transportation of a specialized workforce to and from the job site, and unrealized labor learning. Costs should not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the CO should obtain in-house engineering cost estimates identifying the detailed recurring and non-recurring costs, and indicating labor learning implications.

(7) The CO should establish cancellation dates for each program year’s requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The CO should include these dates in the schedule, as appropriate.

1. The CO should limit the FAA’s payment obligation to an amount available for contract performance. The CO must insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds. If the contract is terminated for convenience of the FAA in whole, including items subject to cancellation, the FAA’s obligation must not exceed the amount specified in the schedule as available for contract performance, plus the cancellation ceiling.

9 Options ~~Added 7/2007~~ Revised 10/2020

a. An option is a unilateral contractual right through which FAA may, within a specified time, chose to purchase additional quantities of supplies or services or extend the term of a

contract. Options can be an effective method of managing risk, reducing administrative costs of resoliciting for recurring requirements, and motivating contractor's performance. Options do not guarantee contractors that FAA will acquire more than the basic contract quantity or extend the period of performance.

b. Options may be stated as increased quantities of supplies or services, or may be expressed in terms of:

- (1) Percentage of specific contract line items.
- (2) Increase in specific contract line items.
- (3) Additional numbered line items.
- (4) Extensions to the term of the contract.

c. *Services.* Generally, contracts with options for recurring services should be limited to five years. Contracts subject to the Service Contract ~~Aet~~Labor Standards cannot exceed five years, including options.

d. *Evaluation of Option/Exercise at Award.* The solicitation must state whether the CO will evaluate offers inclusive or exclusive of options and, if applicable, state whether options will be exercised at the time of award. If the CO may exercise an option at award, the solicitation must specify the price at which FAA will evaluate the option (highest option price offered or option price for specified requirements).

e. *Price Limitation.* A solicitation may allow options to be offered without or with price limitation. Solicitations may require options to be offered at prices no higher than those for the initial requirement. Solicitations that limit option prices should specify that FAA will accept an offer containing an option price higher than the basic price only if the acceptance does not prejudice any other offeror.

f. *Priced Options.* Priced options contain specific option pricing and, if applicable, an appropriate economic price adjustment index. Priced options give FAA a unilateral right to purchase additional quantities or extend a contract period at pre-agreed prices and terms. Priced options are appropriate when the market is relatively stable, price inflation is fairly predictable, the nature of the requirement is not likely to change significantly between award and the time the option is exercised, or when it may be difficult to test the market at a future date.

g. *Unpriced Options.* For unpriced options, the terms and conditions are agreed to at the time of basic contract award but option prices are not agreed to until exercise. Unpriced options may include a not-to-exceed amount established at the time of basic contract award (otherwise exercise of the option requires single source justification). Unpriced options may be bilaterally exercised after agreement on prices.

h. *Public Announcement.* A public announcement is not required for option exercise.

i. *Option Exercise.* The CO makes a prudent business decision whether to exercise an option. The CO, consulting with the program official, should consider funding availability, option prices, and contractor performance (timeliness and quality) when arriving at this decision. The CO may also consider:

(1) A new solicitation, an informal analysis of prices, or examination of the market would not produce better prices or a more advantageous offer than that offered by the option.

(2) The time between award of the basic contract and option exercise is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.

j. *Economic Price Adjustment.* For options that include an economic price adjustment, the CO should determine the effect of that adjustment on option prices before exercise.

k. *Notification.* The CO must notify the contractor that FAA is exercising an option; options are not self-exercising. When exercising an option, the CO provides written notice to the contractor within the time period specified in the contract. The contract terms may also require the CO to give preliminary notice of intent to exercise an option.

10 Basic Agreement Revised 7/2007

A basic agreement is a written instrument of understanding, negotiated between FAA and a contractor, which contains contract clauses applying to possible future contracts between the parties. During the basic agreement's term, separate future contracts will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

a. *Application.* A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

b. *Contents.* Basic agreements should contain the clauses required by AMS and other appropriate clauses that the parties agree to include in each contract.

c. *Termination.* Each basic agreement will provide for discontinuing its future applicability upon 30 days written notice by either party. The CO should annually review each basic agreement before the anniversary of its effective date and revised as necessary. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement. Discontinuing or modifying a basic agreement must not affect any prior contract incorporating the basic agreement. COs may obtain and use existing basic agreements of another agency when practical.

d. *Exclusions.* A basic agreement does not cite appropriations or obligate funds, or state or imply any agreement by FAA to place future contracts or orders with the contractor.

e. *Incorporating contract.* Each contract incorporating a basic agreement includes a scope of work and price, delivery, and other appropriate terms applicable to the particular contract. The basic agreement should be incorporated into the contract by specific reference (including reference to each amendment) or by attachment. Clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, should be included in the same manner as if there were no basic agreement.

11 Basic Ordering Agreement Revised 7/2007

A basic ordering agreement is a written instrument of understanding, negotiated between the FAA and a contractor. A basic ordering agreement contains terms and conditions applying to future contracts (orders) between the parties during its term, a description, as specific as practicable, of supplies or services to be provided, and methods for pricing, issuing and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

a. *Application.* A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor but specific items, quantities, and prices are not known at the time the agreement is executed. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment and inventory obsolescence due to design changes.

b. *Contents.* Each basic ordering agreement describes the method for determining prices to be paid to the contractor for the supplies or services. It also includes delivery terms and conditions or specifies how they will be determined, dispute provisions, and any special payment provisions. The agreement contains a list of FAA activities authorized to issue orders under the agreement. Each basic ordering agreement specifies the point at which the order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days). The agreement also contains a statement that failure to reach agreement on price for any order issued before its price is established will be processed as a dispute under the dispute provisions included in the basic ordering agreement.

c. *Administration.* The CO should annually review each basic ordering agreement before the anniversary of its effective date and revised as necessary. Basic ordering agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic ordering agreement should be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement does not retroactively affect orders previously issued under it.

d. *Issuing Orders.* A CO representing any Government activity listed in a basic ordering agreement may issue orders for supplies or services covered by that agreement. A CO may issue orders under basic ordering agreements on any appropriate contractual instrument that incorporates by reference the

provisions of the basic ordering agreement. The CO should neither make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting FAA's obligation and either:

(1) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(2) The need for the supplies or services is compelling and unusually urgent. For example, FAA would be seriously injured, financially or otherwise, if the requirement were not met sooner than would be possible if prices were established before the work began. The CO should proceed with pricing as soon as practical. In no event should an entire order be priced retroactively.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Appendices Revised 7/2008

1 Appendix - Sample Letter Contract Revised 4/2012

SAMPLE LETTER CONTRACT

Mr. John Smith

Smith Services Company

1234 Easy Street

Oklahoma City, Oklahoma 73123

Dear Mr. Smith:

This letter constitutes an authorization for you to commence work on proposed contract _____
(*insert contract number and brief description of work*), subject to the following:

(a) A maximum of \$_____ (*insert amount equal to 50% of contractor proposal or a not-to-exceed amount*) of costs may be incurred.

- (b) Expenditures above that amount are not authorized, and are at your own risk.
- (c) Work is authorized to begin _____ (*insert date not earlier than date of letter*).
- (d) This authorization is subject to FAA cost principles described in FAA Acquisition Management System Policy section 3.3.2.
- (e) When the contract for this project is definitized, it will be a _____ (*insert appropriate type of contract*).
- (f) In the event of contract termination, calculation of payments due under this authorization will be accomplished under the provisions of clause(s) _____ (*enter appropriate termination clauses*).
- (g) The work authorized by this letter is described in your proposal of _____ (*date or other appropriate reference to the SOW*). (*COs should ensure a copy of the SOW is attached to the COR copy of the letter contract.*)
- (h) The Contracting Officer's Representative is _____ (*insert appropriate information*); telephone number is _____ (*insert appropriate information*).
- (i) You must furnish cost or pricing information if such information is requested by the Contracting Officer.
- (j) (*The CO should add any other terms and conditions deemed necessary for the proper execution of the project*)
- (k) A definitized contract is expected to be completed no later than _____ (*insert number of workdays from date of letter*)
- (l) Accounting data: _____ (*insert appropriate information*).

Sincerely,

Contracting Officer

2 Appendix - Award Fee Revised 7/2012

1. Introduction (*insert number of*

This appendix includes additional explanation of award fee. It focuses on award fee under cost-reimbursement contracts, but the general concepts apply to award fee on other types of contracts.

An award fee contract provides a separate amount that a contractor may earn, in whole or in part, based on FAA's periodic evaluations of its performance. Award fee is intended to reward contractor performance, considering both the levels of performance and conditions under which the contractor achieved those levels. Award fee gives FAA flexibility to judgmentally evaluate contractor performance, and to quickly change evaluation plans to reflect changes in FAA management emphasis or concern.

2. Award Fee Provisions

A cost-plus-award fee contract includes an estimated cost, a base fee, an award fee, and an evaluation and fee payment plan. The contract also includes a clause specifying that award fee determinations are made unilaterally by the designated Fee Determination Official (FDO), according to the approved evaluation plan, and determinations are not subject to appeal under the Disputes clause.

3. Administrative Cost Versus Benefit

Award fee requires added administrative activities. Tailoring an award fee approach avoids an administrative burden disproportionate to any expected improvements in a contractor's performance and overall project management. When deciding whether to use award fee, the Contracting Officer (CO) should consider administrative cost versus expected benefit. Administrative cost includes staff time to monitor, evaluate, document, brief and otherwise implement award fee. Cost drivers include frequency of evaluation periods, and number of people involved in administering award fee. Benefits, which may be intangible and difficult to estimate, could include dollars saved by enhanced technical capability.

4. Fees

The total amount of base fee (if any) and award fee is established at contract award. The sum of base fee and award fee should reflect the overall character, difficulty, and uncertainty of the effort.

Base fee is a fixed amount, similar to fixed fee, that a contractor earns for basic risk of contract performance. Base fee is optional; FAA may decide instead to reward contractor performance solely through award fee. When base fee is used, the amount should be limited so that it does not undermine the effectiveness of award fee. Base fee payments are generally made as part of the regular cost voucher process.

Award fee is a separate amount sufficient enough to reward the contractor for all levels *above* minimally acceptable performance. Actual award fee earned by the contractor is determined by FAA's assessment of performance against criteria included in an evaluation plan. The contractor can earn any amount of available award fee, from none to all. The contractor does not earn any award fee for less than satisfactory performance. Award fee available, but not earned, for an evaluation period is forfeited by the contractor and cannot carry forward to subsequent evaluation periods.

When establishing award fee, the CO may consider weighted guidelines profit/fee analysis factors, such as contractor effort, complexity of the effort, labor and indirect costs, cost risk, and other factors as applicable. Award fee should not be excessive, but should be large enough to adequately motivate contractor performance.

One of the most difficult situations is a hybrid contract, where there might be multiple performance incentives in addition to an award fee. The amounts allocated to each fee area must be sufficient to adequately motivate and reward a contractor to excel in each. There should be a balance in which no fee area is either so insignificant that it offers little reward or so large that it overshadows all other areas. The number of factors being incentivized also plays a part. When too many factors are incentivized, the prospect increases of any one item being too small (and thus overlooked), or the incentives being (or perceived as being) inconsistent and working at cross purposes. Using too many factors can also be confusing and increase the administrative burden.

5. Combination with Other Contract Types

A hybrid contract may be appropriate when certain aspects of a contract performance are best suited to objective measurement and other portions are suited to subjective measurement. For example, an incentive fee might be used for cost control and award fee to reward technical performance. Given the interrelationship between contract costs and the other critical performance elements, the CO should ensure that combinations of objective cost control incentives and subjective/objective award fee determinations do not result in a contractor making trade-off decisions inconsistent with FAA objectives and performance priorities. Poorly structured incentives can result in increased costs with little or no improvement in performance or cost savings with a corresponding loss in performance. No performance element should be incentivized more than once. If a separate incentive is used for cost, then cost control cannot also be rewarded in the award fee. Similarly, performance elements should be carefully structured and defined to avoid overlap, and to preclude downgrading in multiple elements for a single type of poor performance. When using hybrid contracts, financial data must be segregated to allow different cost and fee payments based on each type of contract and to provide specific management information and accountability for the work under the different types of contract. Because of the complexity in structuring and administering a hybrid contract, the CO should be reasonably sure that increased administrative costs will be offset by potential benefit.

6. Organization and Administration

The most effective organizational and administrative approach differs with each situation. The overall objective is to not impose an unreasonable administrative burden, considering the value and complexity of the contract. The following are basic guidelines:

- a. Avoid creating too many organizational layers. Excessive layers contribute to unnecessary paperwork, delays in turnaround time, and inordinate staffing demands.
- b. At the same time, the CO and project manager's assessments should be reviewed by higher level management officials who have a broader perspective and are not involved in the daily interaction with the contractor. Evaluations must be based on contractually required performance.

c. Tailor performance evaluation plans to the specific situation, but do not reinvent the wheel. The tailored, case-by-case application of successfully used procedures and practices generally works best.

d. The objective is to evaluate performance and not micromanage it. The Government tells the contractor what results are expected and important. It then evaluates and rewards the contractor as appropriate for achieving or exceeding the desired results. Communication with contractor personnel about performance should not lead to Government direction in a manner that compromises the contractor's responsibility or ability to manage under the contract.

7. Organizational Levels and Functions

The following basic organizational structure is appropriate for most situations. This structure and responsibilities may be modified to fit the circumstance:

- a. Fee Determination Official
- b. Performance Evaluation Board (with chairperson)
- c. Performance Evaluation Coordinators (*optional*)
- d. Performance Monitors

Fee Determination Official (FDO) -The FDO is organizationally senior to the Performance Evaluation Board (PEB) members. The FDO is identified by position title, and not name, in the award fee evaluation plan. This establishes the level of the award fee determinations, while eliminating the need to modify the contract if the incumbent FDO changes. The FDO's responsibilities include:

- a. Establishing the PEB
- b. Approving the award fee evaluation plan and any changes required during performance, unless the FDO delegates responsibility for changes to the plan to the PEB.
- c. Considering the PEB report for each evaluation period and discussing it with the PEB Chair and, if appropriate, with others such as the contractor.
- d. Determining the amount of award fee earned and payable for each evaluation period. In the cases where all evaluation ratings are interim except the last one, determining the amount of interim award fee to be paid for each evaluation period. The FDO ensures the amount and percentage of award fee earned accurately reflects the contractor's performance.
- e. Justifying and documenting for the contract file any variances between the

PEB recommendation and FDO determination.

- f. Signing the award fee determination letter specifying the amount of award fee earned and the basis for that determination for the evaluation period.

Performance Evaluation Board (PEB) - The PEB is established by the FDO. The PEB brings a broader management perspective to the evaluation process than at the monitor level (and PEB members should be at a higher management level than performance monitors). The qualifications of PEB members will vary depending on the nature, dollar value and complexity of the contract. The PEB should include at least members with overall responsibility for the technical and contracting aspects of contractor performance. Board members should be familiar with the type of work to be evaluated and be able to devote enough time to their assignment to perform thorough and prompt reviews. The PEB should be established in sufficient time so it can develop (or oversee development) and distribute an approved evaluation plan *before* the start of the first evaluation period. PEB responsibilities include:

- a. Conducting ongoing evaluations of contractor performance based on Performance Monitor reports and additional performance information as may be obtained from the contractor and other sources. The PEB evaluates contractor's performance according to the standards and criteria stated in the performance evaluation plan.
- b. Submitting a PEB report to the FDO covering the Board's findings and recommendations for an award fee amount for each evaluation period.
- c. Recommending appropriate changes in the performance evaluation plan for approval by the FDO (if plan changes are not delegated to the PEB), if any.

Performance Evaluation Board (PEB) Chair - The FDO designates one PEB member as the Chair. The functions of a PEB Chair include:

- a. Scheduling PEB meetings, controlling attendance and chairing the meetings.
- b. Recommending appointment of nonvoting members to assist the PEB perform its functions, e.g., a recording secretary.
- c. Appointing monitors for the contract effort and assuring they are provided appropriate instructions and guidance.
- d. Requesting and obtaining performance information from other personnel involved in observing contractor performance, as appropriate.
- e. Obtaining help from other personnel to consult with the PEB, as needed.
- f. Preparing and obtaining approval of the PEB report and other documentation such as PEB minutes.

- g. Ensuring the timeliness of award fee evaluations.

Performance Monitors - Monitors provide continuous evaluation of the contractor's performance in specific assigned areas of responsibility. This often daily oversight is the foundation of the award fee evaluation process. Performance monitors are specialists familiar with their assigned areas of cognizance; their monitor duties generally are in addition to, or an extension of, their regular responsibilities. In performing their duties, monitors should maintain ongoing communication with their contractor counterparts, conduct assessments in an open, objective and cooperative spirit, and emphasize applicable negative and positive performance elements. Monitors are designated by the PEB Chair. Responsibilities of Performance Monitors include:

- a. Monitoring (not directing), evaluating and assessing contractor performance in their assigned areas. This activity is conducted according to contract requirements and the award fee plan so that evaluations are fair and accurate.
- b. Periodically preparing a Performance Monitor report for the PEB and, if necessary, providing verbal presentations as well.
- c. Recommending any needed changes in the performance evaluation plan for consideration by the PEB and the FDO.

Performance Evaluation Coordinator (PEC) – In certain high dollar value, complex efforts, the following organizational level also might be used. Performance Evaluation Coordinators provide centralized direction to the various performance monitors and consolidate the findings of the performance monitors for review at the next highest evaluation level. The PEC level should be used only when a very large number of performance monitors are involved in the evaluation process. Each PEC (appointed by the PEB Chair, with appropriate notification to the contractor) is responsible for one of the broad functional areas to be evaluated, such as technical or project management. PEC duties include:

- a. Furnishing instructions to performance monitors in their assigned areas.
- b. Ensuring that the contractor is promptly notified whenever a problem is identified requiring immediate contractor attention. However, PECs should not give technical direction unless they are designated contracting officer's representatives (CORs) and their contracts contain a technical direction clause.).
- c. Coordinating, consolidating and analyzing data submitted by their performance monitors and preparing a concisely written PEC report for presentation to the next highest evaluation level for each evaluation period.

8. Training

All personnel involved in award fee administration should be trained on the process. Training should begin before or immediately after contract award so that personnel understand the award fee process before beginning their duties. Training should cover the performance evaluation plan, roles and responsibilities, documentation requirements, evaluation techniques, and other areas such as:

- ☐ What is an award fee contract
- ☐ What is being evaluated
- ☐ How will information be gathered; what techniques will be used (e.g., inspection, sampling of work, observation, review of reports or correspondence, or customer surveys);
- ☐ When or how often will information be obtained (e.g., daily, weekly or monthly);
- ☐ How will performance monitors secure information from functional specialists to cover areas in which the monitors may not be personally involved; and
- ☐ Evaluation scoring processes and the need for consistency between scoring and evaluation summaries.

9. Steps in the Evaluation Process

Assuming the basic three-level organizational structure, the sequence of events leading to an award fee determination is:

- a. A certain number of days before the period starts (specified in the performance evaluation plan), the contractor is provided with any changes to the performance evaluation plan. In addition, the PEB may determine that it wants to highlight a performance area that the contractor should pay particular emphasis to during the period. For instance, an area of performance during the period may be of particular risk to the program. The PEB may want to focus the contractor's attention on this area of risk by highlighting it. This may be done by issuing a "letter of emphasis" to the contractor a certain number of days prior to the start of the evaluation period, if specified in the performance evaluation plan.
- b. During the course of the evaluation period, performance monitors track contractor performance. Interim (mid-term) evaluations may be used to identify strengths and weaknesses in the contractor's performance during the period being evaluated. Interim evaluations are documented and should involve the FDO.
- c. At the end of the period, the performance monitors assess and document the contractor's performance, and report to the PEB.
- d. The PEB considers the performance monitors' reports and any other pertinent information, including information provided by the contractor during the evaluation period, and prepares a report for the FDO with findings and recommendations.

e. The contractor may be allowed to comment on its performance during the evaluation period, using one or more of the following methods:

- ☐ The contractor may provide a written or oral self-assessment of its performance for consideration by the PEB.
- ☐ The contractor may be provided a copy of the PEB's draft findings and recommendations and may be allowed to identify factual errors. Any errors identified by the contractor would be addressed by the PEB in its final report. The contractor's draft recommendation is not a subject for negotiation; the PEB should not engage in discussions with the contractor.
- ☐ The contractor may be provided a copy of the final PEB report at the same time as the PEB submits it to the FDO. Contractor may submit comments directly to the FDO for consideration.

f. The FDO meets with the PEB to discuss the PEB's report. The FDO then makes a final determination in writing for the amount of award fee earned and to be paid. The FDO provides the determination to the CO, who sends it to the contractor. The FDO's rating is provided to the contractor as quickly as possible after the end of the period being evaluated. The FDO and PEB should provide a debriefing to the contractor after the rating has been issued.

g. Payment to the contractor should be made as soon as possible after the end of the period. The contractor submits a separate voucher for award fee to be paid.

10. Performance Evaluation Plan (PEP)

The performance evaluation plan (PEP) includes:

- ☐ Organizational structure for award fee administration
- ☐ Method for determining award fee, including evaluation criteria and periods
- ☐ Method for implementing any changes in plan coverage

The plan should be tailored to the particular situation and should:

- ☐ Focus the contractor on performance areas of greatest importance to motivate it to make the best possible use of company resources to improve performance;
- ☐ Provide for evaluations of contractor performance levels, taking into consideration contributing circumstances and contractor resourcefulness;
- ☐ Clearly communicate evaluation procedures and provide for effective, two-way communication between the contractor and the Government personnel responsible for evaluating performance and making award fee determinations;
- ☐ Provide for an equitable and timely evaluation process;
- ☐ Establish an effective organizational structure, commensurate with the complexity and dollar value of the particular procurement, to administer the award fee provisions; and
- ☐ Be kept as simple as feasible; the simpler the plan, the more effective it is likely to be.

11. Changing the Performance Evaluation Plan

The performance evaluation plan is usually not included in the contract. This gives FAA the right to unilaterally alter the plan to reflect any changes in management emphasis. If the plan is made a part of the contract, then FAA's ability to unilaterally change the plan must be specifically stated in the contract. Unilateral changes may be made to the plan if the contractor is provided written notification by the CO before the start of the upcoming evaluation period. Changes affecting the current evaluation period must be by mutual agreement of both parties. All significant changes to the award fee plan should be coordinated with the PEB and approved by the FDO. Examples of significant changes include revising evaluation criteria, adjusting weights to redirect contractor's emphasis to areas needing improvement, changing PEB membership, and revising the distribution of the award fee dollars. It is important that the provision for unilateral changes be clearly described in the contract. The fact that the plan can be unilaterally changed does not give the FAA the right to unilaterally change other award fee provisions or other terms of the contract, absent contract language allowing it to do so.

The Appendix to this guidance includes a sample PEP.

12. Performance Evaluation Factors

It is neither necessary nor desirable to include all functions required by the statement of work as part of the performance evaluation plan. However, those functions selected should be balanced so that a contractor, when making trade-offs between evaluation factors, assigns the proper importance to all of the critical functions identified. For example, the plan should emphasize a combination of technical performance and cost considerations, because an evaluation plan limited to technical performance (alone) might result in increased costs out of proportion to any benefits gained.

Spreading the potential award fee over a large number of performance evaluation factors dilutes emphasis. Instead, broad performance factors should be selected, such as technical, project management and cost control, supplemented by a limited number of subfactors describing significant evaluation elements over which the contractor has effective management control. Prior experience can be helpful in identifying those key problem or improvement areas that should be subject to award fee evaluations.

Some basic areas of performance need to be evaluated and rewarded on every contract. Other areas are critical only in some instances. Cost control will always be included as an evaluation factor for cost-plus-award fee contracts, if there isn't a separate cost incentive in the contract. In general, controlling the cost of the system/equipment or service being provided, its quality (technical merit, design innovation, reliability, etc.), and its timely delivery will always be important-- although their relative importance and the measure of what constitutes good performance may vary. The relative importance of the factors and the method of evaluating a contractor should be tailored to fit the needs of individual procurement. For example, providing an item on time is generally critical to the contract. However, earlier delivery might also be of benefit to the Government and worth incentivizing. On the other hand, early deliveries might be of no benefit, or even cost the

Government money if companion technologies are not yet available resulting in increased costs to the Government for storage.

The evaluation factors used in award fee should not be standardized. Rigid standardization tends to generate evaluation plans that are either too broad or include factors inapplicable to a given function. In either case, evaluators are likely to experience difficulties in providing meaningful comments and ratings. It is preferable to tailor performance evaluation plans and factors to fit the circumstances. As contract work progresses from one evaluation period into the next, the relative importance of specific performance factors may change.

Depending on the situation, performance evaluation factors may include outcomes, outputs, inputs or a combination of the three. An outcome factor is an assessment of the results of an activity compared to its intended purpose. Outcome-based factors are the least administratively burdensome type of performance evaluation factor, and should provide the best indicator of overall success. Outcome-based factors should be the first type of evaluation factor considered, and are often ideal for non-routine efforts.

An output factor is the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner. Output factors may be more desirable for routine efforts. When output factors are used, care should be taken to ensure that there is a logical connection between the reported measures and the program's mission, goals, and objectives. Examples of outcome and output factors:

Outcome: Safely install and ensure the lighting systems are certified and operational to satisfy needs.

Output(s):

- ☐ Deliver lighting systems to airports no later than July 15, 2008.
- ☐ Assemble and certify lights at each airport not later than December 15, 2008.
- ☐ Install and ensure lighting compatibility at each airport by January 5, 2009.

Outcome: Ensure program spare parts are maintained at a level sufficient to provide a 6-month supply at normal monthly draw down.

Output: Store a minimum of 1,000 program spare parts.

Input factors refer to intermediate processes, procedures, actions or techniques that are key elements influencing successful contract performance. These may include testing and other engineering processes and techniques, quality assurance and maintenance procedures, subcontracting plans, purchasing department management, and inventory, work assignment and budgetary controls.

While it is sometimes valuable to consider input and output factors when evaluating contractor performance, it is preferred to use outcome factors when feasible since they are better indicators of success relative to the desired result. For example, in the case of service contracts where performance is demonstrated and measurable in each evaluation period, input factors may be of value in building a

historical database, but may be of little or no value in the evaluation process. Accomplishments, such as achieving small and small disadvantaged subcontracting goals, are what are important, as opposed to efforts expended. In other contracts, however, where the quality of performance cannot be determined with certainty until the end of the contract, input factors can be useful indicators of how well the contractor is achieving its ultimate performance objective. However, a heavy emphasis on input factors, while meant to provide positive motivation to the contractor in certain areas of performance, may in some cases because the contractor to divert its attention and focus from the overall output or outcome desired. Input factors are not always true indicators of the contractor's ultimate performance and so should be relied on with caution.

Some examples of performance evaluation factors, subfactors and criteria are shown below. They do not cover all possibilities, but illustrate some of the key performance areas that can be selected as evaluation factors.

Technical Performance - Accomplishment achieved in the areas of:

- ☐ Design: Approach in design concepts, analysis, detailed execution and low cost design and manufacturing. Design of test specimens, models and prototypes.
- ☐ Development: Conception/execution of manufacturing processes, test plans and techniques. Effectiveness of proposed hardware changes.
- ☐ Quality: Quality assurance, e.g., appearance, thoroughness and accuracy, inspections, customer surveys.
- ☐ Technical: Meeting technical requirements for design, performance and processing, e.g., weight control, maintainability, reliability, design reviews, test procedures, equipment, and performance.
- ☐ Processing Documentation: Timely and efficient preparation, implementation and closeout.
- ☐ Facilities/GFE: Operation and maintenance of assigned facilities and Government Furnished Equipment.
- ☐ Schedule: Meeting key program milestones and contractual delivery dates; anticipating and resolving problems; recovery from delays; reaction time and appropriateness of response to changes.
- ☐ Safety: Providing a safe work environment; conducting annual inspections of all facilities; maintaining accident/incident files; timely reporting of mishaps; providing safety training for all personnel.
- ☐ Information Management: Ability of computer system to provide adequate, timely and cost effective support; meets security requirements; management information systems ensures accurate, relevant and timely information.
- ☐ Material Management: Efficient and effective processing of requisitions, with emphasis on priority requisitions; responsiveness to changes in usage rates.

Project Management - Accomplishment achieved in the areas of:

- ☐ Program Planning/Organization/Management: Assignment and utilization of personnel; recognition of critical problem areas; cooperation and effective working relationships with other contractors and Government personnel to ensure integrated operation efficiency;

support to interface activities; technology utilization; effective use of resources; labor relations; planning, organizing and managing all program elements; management actions to achieve and sustain a high level of productivity; response to emergencies and other unexpected situations.

- ☐ Compliance with contract provisions: Effectiveness of property and material control, Equal Employment Opportunity Program, Minority Business Enterprise Program, system and occupational safety and security.
- ☐ Effectiveness in meeting or exceeding small business and small disadvantaged business subcontracting goals.
- ☐ Subcontracting: Subcontract direction and coordination. Purchase order and subcontractor administration.
- ☐ Timely and accurate financial management reporting.

Cost Control – The procurement team may consider the contractor's ability to control, adjust and accurately project contract costs (estimated contract costs, not budget or operating plan costs) through:

- ☐ Control of indirect and overtime costs. o Control of direct labor costs.
- ☐ Economies in use of personnel, energy, materials, computer resources, facilities, etc.
- ☐ Cost reductions through use of cost savings programs, cost avoidance programs, alternate designs and process methods, etc.
- ☐ "Make versus buy" program decisions.
- ☐ Reduced purchasing costs through increased use of competition, material inspection, etc.

The predominant consideration when evaluating cost control should be an objective measurement of the contractor's performance against the estimated cost of the contract, including the cost of undefinitized contract actions when appropriate. The estimated cost baseline should be adjusted to reflect cost increases or decreases associated with changes in Government requirements or funding schedules which are outside the contractor's control. In rare circumstances, contract costs might increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment, such as weather-related. Such situations should be taken into consideration when evaluating contractor cost control. In the case of contracts for services where contractor performance is consistent and complete within each evaluation period and does not carry over into succeeding periods, negotiated estimated cost can generally be apportioned among the evaluation periods. Cost control for each evaluation period can then be measured against that period's share of the estimated costs. However, where contractor performance cannot be ascertained until the end of the contract (such as contracts for R&D) and cost expenditures can vary significantly from one evaluation period to the next, it makes more sense to evaluate interim contractor cost control against a cumulative expenditure profile that reflects the estimated cost.

13. Quantitative and Qualitative Standards

Once evaluation factors are selected, standards or criteria are developed for measuring contractor performance and assessing the amount of award fee earned.

Quantitative or objective performance measurement standards are based on well-defined parameters for measuring performance. They include customer surveys, inspection reports and test results. Quantitative measures should be used whenever the given performance can be precisely or finitely measured. Sufficient information or experience must be available to permit the identification of realistic standards against which quantitative measurements may be compared.

Unlike the predetermined targets and fee adjustment formulas used in incentive fee type contracts, any comparison of contractor performance against quantitative standards in the award fee environment will need to be tempered by a qualitative evaluation of existing circumstances. Quantitative measurements are not a substitute for judgment. Keep in mind that any reasonable assessment of effectiveness requires an evaluation process encompassing both performance levels and the conditions under which those levels were achieved. To be realistic, any standard (or range of acceptable performance levels) should reflect the nature and difficulty of the work involved.

Qualitative or subjective performance standards rely on evaluator's opinions and impressions of performance quality. Qualitative assessments must be as informed as possible and not rely on personal bias or a purely intuitive feeling. Some examples are:

- ☐ **Staffing:** Optimal allocation of resources; adequacy of staffing; qualified and trained personnel; identification and effective handling of employee morale problems; etc.
- ☐ **Planning:** Adequate, quality, innovative, self-initiated and timely planning of activities; effective utilization of personnel; quality of responses; etc.

Another example of a qualitative standard is a "quality review" such as a questionnaire requiring "yes" or "no" answers, with a high proportion of "yes" answers indicative of high quality performance. Note that narrative support for questionnaire answers is required.

Where feasible, the quantitative or objective measures are preferred over qualitative or subjective ones. The greater the ability to identify and quantify the facts considered in arriving at a judgmental assessment, the more credible that assessment is likely to be (and the easier it will be to prepare the supporting documentation required).

14. Weighting Evaluation Factors

In addition to identifying how performance will be evaluated and measured, the detailed performance evaluation plan should indicate the relative priorities assigned to the various performance areas and evaluation factors and subfactors. This may be accomplished through the use of narrative phrases such as "more important," "important," and "less important" or through percentage weights. When percentages are used, the plan should state that they are for the sole purpose of communicating relative priorities, and do not imply an arithmetical precision to the judgmental determinations of overall performance quality and the amount of award fee earned.

When percentage weights are used, cost control could be at least 25 percent of the total award fee. When adjectives or narratives are used in lieu of explicit weights, cost control should be a substantial

factor. No other factor should be less than 10 percent. This ensures that the factors are balanced and, when making trade-offs, the contractor assigns the proper importance to all factors.

The methodology used to establish percentage weights is illustrated in the following example:

Example:

First, list the primary evaluation factors in descending order of importance and assign a percentage weight to each factor starting with the most important. Assign the least important factor no less than 10 percent (unless the least important factor is cost control, which would be assigned a minimum of 25 percent). All assigned weightings for primary evaluation factors must total 100 percent. Round all numbers off to the nearest whole number to avoid giving the impression that the procedure is a precise one.

Next, assign percentage weights to the subfactors supporting each of the primary evaluation factors such that the total of the subfactor weights for each performance factor totals the assigned weight for that factor as shown in the example below. The actual factors and subfactors used as well as the weights assigned in any given contract may be different from those shown in the example. For instance, indirect cost control, subcontract costs, other direct costs, etc. should be evaluated when they are significant elements of cost.

Factors/Subfactors	Assigned Weight	
Technical	42%	
Design		24%
Quality		12%
Schedule		6%
Project Mgmt.	32%	
Planning		26%
Subcontracts		6%
Cost Control	26%	
Labor Cost Control		15%
Overhead Cost Control		11%
Total	100%	

15. Length of Evaluation Periods

Award fee evaluation periods should generally be between three to six months. Too short of an evaluation period can be administratively burdensome and lead to hasty or late evaluations which result in late fee determinations. Alternatively, evaluation periods may be tied to completing milestones. When linking evaluation periods to milestones, ensure evaluations do not occur at infrequent intervals or become subject to lengthy slippage.

16. Allocation of Award Fee

After the total award fee amount is established, the total pool is allocated over the award fee evaluation periods. For contracts where each evaluation is final, the allocation of award fee determines its distribution for final payment purposes. For other contracts, where all evaluations (and payments) are interim, except the final evaluation, award fee is allocated among the evaluation periods solely for the purpose of making interim payments against the final evaluation. That final evaluation will determine the amount of total award fee actually earned by the contractor and will supersede any interim evaluations and payments made.

The distribution of the award fee pool depends on the circumstances. Contractor expenditure profiles may be considered. The total may be allocated equally among the evaluation periods if the risks and type of work are similar throughout the various evaluation periods. Otherwise, if there is a greater risk or critical milestones occur during specific evaluation periods, a larger portion of the pool may be distributed to those periods. This permits the Government to place greater emphasis on those evaluation periods. For example, if a contract has a short initial evaluation period for the contractor to become familiar with the work, the initial period of performance may have a smaller allocation while the remaining pool is divided equally among the remaining evaluation periods. If the schedule for a significant event changes, any potential award fee amount associated with that event must be reallocated accordingly for interim payment purposes.

The following example illustrates an unequal allocation of award fee among the four performance periods, reflecting different degrees of emphasis.

Estimated Cost	\$5,000,000
Base Fee (0%)	0
Total Award Fee (10%)	\$ 500,000
Total	\$5,500,000

Evaluation Periods

	1	2	3	4	Total
Allocation (%)	10%	26%	40%	24%	100%
Allocation (\$)	\$50,000	\$130,000	\$200,000	\$120,000	\$500,000

17. Evaluation of Delivery or Task Order Contracts

A delivery or task order contract may provide for orders with specific requirements that are independent of any other orders' requirements and that have separate, distinct sources of funding. For such orders, an award fee amount could be allocated to each individual order along with the estimated cost. Contractor performance on each order would be evaluated against the award fee criteria on a task-by-task basis. There are instances where the Government wants to motivate the contractor's performance at the contract level versus each individual order. This condition may exist when the overriding objective is not how each individual order is executed, but how the contractor's performance

of multiple orders contributes to meeting the overall contract objectives. For example, it may not be cost effective to evaluate contractor performance on a task order basis, or when unknown/undefined requirements may materialize during the contract. An unknown requirement may arise that has a higher priority than an existing order. The primary objective is for the Government/contractor team to make trade-offs between the orders in a constrained environment (funding, staffing, etc.) to ensure the optimal capability is achieved at the system performance level. Therefore, the ultimate measure of success is judged as meeting the overall contract objectives and not necessarily on the performance of a single order. In this case it is in the Government's best interest to incentivize the contractor to focus its efforts and perspective on overall contract performance versus the individual orders. This does not preclude management of individual orders. To ensure that there is no confusion about how the contractor's performance will be evaluated, the award fee plan must clearly state whether the evaluation criteria are applicable at the contract or individual order level.

18. Interim and Final Evaluations

The decision about whether to conduct interim or final evaluations depends on the circumstance. In service contracts, the contract deliverable is a service and contractor performance is measurable at each evaluation period. Performance is usually not cumulative and its quality cannot be improved or reduced by future performance. For that reason, in service contracts, evaluations should be final and unearned award fee cannot be "rolled over" into subsequent evaluation periods or ever retroactively "taken back." On other contracts such as study, design or hardware, where the true quality of contractor performance cannot be measured until the end of the contract, the contract deliverable is an end item. Contractor performance leading up to delivery of the end item is an indication of whether and how well it will produce the end item, but it is not the end item itself. Since the actual quality of the end item cannot be determined until the end of the contract when it is delivered, the last evaluation should be final. All other evaluations and ratings would be interim.

At the end of the contract, the contractor's total performance is evaluated against the performance evaluation plan to determine total earned award fee. That final rating supersedes all interim ratings. It is not the average of the interim ratings. Instead, it reflects the contractor's position at the end of the contract rather than its interim progress toward that position. For example, how well a contractor has controlled costs can only be determined at the end of the contract when the contractor is evaluated against its final cost position. Whether the contractor was overrunning or underrunning the contract estimated cost at various points in time is irrelevant. The contractor's success is measured against the end result. Likewise, the contractor's ability to meet the contract schedule is determined when the hardware is delivered and accepted by the Government. Whether the contractor was behind or ahead of schedule during the course of the contract is not relevant in the final evaluation. The same thing is true of the other evaluation factors and subfactors.

Any significant events that contributed over the course of the contract to the contractor's position (such as delays in receipt of Government furnished equipment), should be considered in the final award fee determination. Those events should be examined as they relate to the final contract outcome and not to the individual evaluation periods in which they occurred.

19. Grading and Scoring Contractor Performance

Grading and scoring methods are used to translate evaluation findings into recommended award fee amounts or ranges. The purpose is to help the FDO decide the amount of award fee earned. These methods are evaluation tools and are not a substitute for judgment in the award fee determination process. The decision process cannot be reduced to a mathematical formula or methodology. Either a weighted or nonweighted process can be used to evaluate performance.

One method is for evaluators to start from the satisfactory performance level and adjust the scores upwards or downwards, depending on the contractor's performance for the period. A rating table may be used as a guide. Another method is for evaluators to use "blind" evaluation sheets where they are asked to rate different criteria using numbers based on the adjectival ratings. The weights that will eventually be applied to their ratings do not appear on the sheets. This approach relieves to some extent the pressure placed on the evaluators by contractor employees.

As a general guideline, a contractor which satisfactorily meets its contractual commitment will fall into the "good" (71-80) range. To earn an "excellent" score (91-100), a contractor must provide exceptional performance--a combination of excellent cost, schedule and technical management. Some general considerations in the development of a grading and scoring methodology are as follows:

- ☐ When Government actions impact contractor performance either positively or negatively, e.g., changes in funding allocation or increased emphasis on certain technical requirements which require the contractor to make unexpected and extensive tradeoffs with other technical requirements, those actions should be considered in the scoring and grading process.
- ☐ The methodology should be kept as clear and simple as possible. In particular, the situation where specially tailored evaluation factors are force-fit to a "standard" grading table or scoring formula should be avoided.
- ☐ The maximum fee should be attainable by the contractor. To be a credible and effective motivator, an award fee contract should provide the contractor with a reasonable opportunity to earn the maximum award fee available. Although a reasonable opportunity generally does not mean absolute perfection in all possible performance areas, the contractor's performance should be outstanding in virtually all areas. On the other hand, providing a contractor the maximum fee on every contract, does not adequately address the issues of risk and effort.
- ☐ Documentation of assigned performance values is required in support of award fee recommendations and computations.

20. Award Fee Conversion Table

An award fee conversion table may be used to translates overall evaluation scores (i.e., numerical performance points) into the earned award fee amount. This conversion may be linear (e.g., direct conversion of evaluation points to percentage of award fee earned) or non-linear (e.g., a formula to translate performance points to award fee earned). Use of a conversion table does not remove the element of judgment from the award fee process. Regardless of the method used, zero award fee will be earned for an overall unsatisfactory performance.

The following rating table may be used as a guide for award fee. Earned award fee (or interim award fee amounts in the case of interim evaluations) is calculated by applying the total numerical

score to the award fee pool. For example, a numerical score of 85 yields an award fee of 85 percent of the award fee pool available for that evaluation period. The table below lists the award fee evaluation adjectival ratings with their corresponding score ranges. In addition, a narrative description is also provided to assist the PEB in applying the ratings. Criteria for evaluation factors and subfactors should reflect the table.

Adjective Rating	Range of Performance Points	Description
Excellent	(100-91)	Of exceptional merit; exemplary performance in a timely, efficient and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.
Very Good	(90-81)	Very effective performance, fully responsive to contract requirements ; contract requirements accomplished in a timely, efficient and economical manner for the most part; only minor deficiencies.
Good	(80-71)	Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.
Satisfactory	(70-61)	Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.
Poor/ Unsatisfactory	(less than 61)	Does not meet minimum acceptable standards than in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

No fee will be paid when the total evaluation score is less than 61. In addition, any factor that receives a score of less than 61 for "poor/unsatisfactory" performance will not be rewarded and converted to a factor score of zero. Such zeroing-out should not be done at the subfactor level.

21. Scoring of Cost Control

Cost control should be a substantial factor in any performance evaluation plan, except when a fixed-price award fee, fixed-price incentive or cost-plus-incentive fee contract is used. The contractor's success in controlling costs must be measured against contract estimated costs, and not against budgetary or operating plan costs. The following scoring guidelines will help ensure that cost control receives the proper emphasis:

- a. Whenever there is a significant cost overrun that was within its control, a contractor should be given a score of zero. If the overrun is insignificant, a higher score may be

given. The reasons for the overrun and the contractor's efforts to control or mitigate the overrun should be considered in the evaluation.

b. Cost underruns within the contractor's control should normally be rewarded. However, the extent to which an underrun is rewarded will depend on the size of the underrun and the contractor's level of performance in the other award fee evaluation factors. Contractors should not be rewarded for excelling in cost control to the detriment of other important performance factors. For that reason, whether a cost underrun is rewarded in the evaluation process and, if so, the degree to which it is rewarded depends, not only on the size of the underrun, but also on how well the contractor is performing overall in the other evaluation areas.

c. When the contractor achieves the negotiated estimated cost of the contract, it should not receive the maximum score for cost control. The maximum score for cost control should only be awarded for achieving an underrun. Some lesser score will be assigned, reflecting the degree to which the contractor has prudently managed costs while meeting contract requirements.

22. Example - Calculating Earned Fee

The following example illustrates how evaluation scores for weighted factors and subfactors are calculated to arrive at a total award fee recommendation. Again, keep in mind that the use of weighted factors to calculate an award fee amount is an evaluation aid; the result does not represent a required award fee amount.

a. Background: This CPAF contract covers design and verification testing of hardware. The contractor is also required to deliver eight production items. The total estimated cost and award fee is \$300,000,000. The available award fee for the current interim evaluation period (#7) is \$2,600,000. Evaluation factors and assigned weights are:

Evaluation Factor/ Subfactor		Assigned Weight	
Technical		42%	
	Design		24%
	Quality		12%
	Schedule		6%
Project Management		32%	
	Planning		26%
	Subcontracts		6%
Cost Control		26%	

	Labor Cost Control		15%
	Overhead Cost Control		11%

b. PEB Findings: The findings of the PEB for the most recent evaluation period are summarized below:

Contractor performance was rated very strong overall in the technical area. Accomplishments included successful design and installation of in-flight wear monitors, and successful test of a redesigned turbo pump. Some weaknesses were identified, the most serious of which was an incompatibility between two components which was not resolved during the period, resulting in a slight schedule slip. In the area of project management, strengths were identified, including communication of program activities to the proper management levels, on- schedule delivery of critical subcontracted hardware, and exceeding subcontracting goals. Weaknesses included ineffective checks and balances for processing hardware and insufficient management involvement at vendor sites which has jeopardized hardware integrity. In the cost control area, the cost overrun increased by 14% in this period due in large part to labor costs. Projected overhead increases were also reported; however, the contractor has identified and will implement cost reduction measures which are expected to ameliorate the problem. (Note - promises of future actions are not normally considered in the current period evaluation, but in this case the overhead increase is also only a projection.)

c. Calculating Weighted Performance Points: As a result of the evaluation, the following performance points were assigned and weighted for the subfactors:

Subfactor	Performance Points	Assigned Weights	Weighted Performance Points*
Design	95 (Excellent)	.24	54
Quality	90 (Very Good)	.12	26
Schedule	80 (Good)	.06	11
		Total for Technical	91
Planning	70 (Satisfactory)	.26	57
Subcontracts	86 (Very Good)	.06	16
		Total for Project Mgmt	73
Labor Cost	50 (Poor/Unsat.)	.15	29
Control			
OH Cost Control	70 (Satisfactory)	.11	30
		Total for Cost Control	59 = 0**

*Weighted Performance Points are calculated as follows: (Performance Points x Assigned Subfactor Weight)/Assigned Factor Weight = Weighted Performance Points. For example, for Design: $(95 \times .24)/.42 = 54$

** Note that an unsatisfactory rating for a factor results in a *zero* score for that factor. The Cost Control factor received a zero score for receiving a rating of less than 61 percent. Significant cost overrun within the contractor's control should result in a score of zero for cost control.

Next, total weighted performance points were calculated for the primary evaluation factors as follows:

Weighted Factor	Performance Points	x	Assigned Weight	=	Total Weighted Performance Points
Technical	91	x	.42	=	38
Project Mgmt.	73	x	.32	=	23
Cost Control	0	x	.26	=	0
			Total for All Factors		61 (Sat.)

d. Converting Performance Points to Award Fee Score: The award fee percentage is the same number as the total weighted performance points. In this example, 61 weighted performance points equals 61% of available award fee. Award fee recommendation: \$1,586,000 (61% of \$2,600,000).

23. Example - Changes in Emphasis

If the Government's relative priorities change as work progresses from one phase into the next, or as unexpected problems or developments occur, such as schedule slippages, the evaluation plan may be revised on a unilateral basis, to communicate such changes to all parties. The following example illustrates how the Government can adjust evaluation weights to redirect contractor emphasis to areas needing improvement and the effect of that readjustment on earned award fee.

Estimated Cost	\$5,000,000
Base Fee (0%)	0
Total Award Fee (10%)	\$ 500,000

Total	\$5,500,000
-------	-------------

Evaluation Periods

	1	2	3	4	Total
Allocation (%)	24%	18%	18%	40%	100%
Allocation (\$)	\$120K	\$90K	\$90K	\$200K	\$500K

Evaluation Period 1:

Factor	Weight	x	Performance Points	=	Weighted Performance Points
Technical	.42	x	91 (Excellent)	=	38
Project Mgmt	.32	x	73 (Good)	=	23
Cost Control	.26	x	0 (Poor/Unsat.)	=	0
			Total		61

The contractor earns \$73,200, 61% of \$120,000.

Evaluation Period 2:

If factor weights were adjusted to increase the emphasis on cost control and its performance, and thus its performance points, remained basically the same, this would be the result:

Factor	Weight	x	Performance Points	=	Weighted Performance Points
Technical	.40	x	91	=	36
Project Mgmt	.32	x	73	=	23
Cost Control	.28	x	0	=	0
			59	=	0

The contractor would receive an award fee score of 2 percentage points less in the second period than it would have if the factor weights had not changed. As a result, the contractor would receive an overall score of Poor/Unsatisfactory and no award fee for the second period.

Now, assume that the contractor responds to the shift in emphasis by improving its performance in cost control from Poor/ Unsatisfactory to *minimally satisfactory*, without reducing its score in any other area, as follows:

Factor	Weight	x	Performance Points	=	Weighted Performance Points
Technical	.40	x	91	=	36
Project Mgmt	.32	x	73	=	23
Cost Control	.28	x	61	=	17
					76 (Good)

By increasing its performance in cost control by 31 points (from 30 to 61) - and as a result, it's total score by 17 percent to Good--the contractor is now entitled to receive an award fee payment.

If the cost control weight had not been increased in the second period, the contractor would have continued to be paid fee (61 percent of \$90,000 or \$54,900) for unsatisfactory cost control performance. By changing the factor weights to put more emphasis on cost control, the contractor is either rewarded for improved cost control with more fee than it would have received had the weights had not been changed (76% of \$90,000 or \$68,400) or penalized for not showing improvement in that area (59 percent = no award fee payment for the period).

24. Communication

A properly structured and administered award fee contract provides effective communication among Government and contractor personnel at management levels, where decisions can be made and results achieved. A post-award conference is one way to establish communication channels early and to ensure key Government and contractor personnel understand their responsibilities. Attendees should review and discuss the performance evaluation plan and contract requirements. Frequent and honest communication is essential, both between the Government and contractor and within their respective organizational frameworks. Both Government and contractor personnel should be encouraged through the award fee process to identify potential problems as promptly as possible (as opposed to withholding such "bad news" for fear it might result in unfavorable criticism).

25. Contractor Input

The contractor may be allowed to furnish a self-assessment of its performance. Once the PEB report is prepared, the PEB may also allow the contractor to comment on the draft report. Contractor participation at this point ensures all pertinent data has been considered and no factual errors were used as a basis for decisions. Such communications, however, must not result in negotiation of award fee ratings. The ratings should be fair and reasonable, but are ultimately a unilateral Government determination. Throughout the period of performance, the contractor may be permitted to submit suggestions for improving or changing the evaluation process. In addition to the various formal communications channels, both parties should recognize that frequent, less formal discussions are valuable in ensuring ultimate program success. Both the Government and the contractor should work to eliminate any unnecessary contractual, organizational or conceptual barriers that constrain information sharing and other communications needed for successful joint problem solving.

26. Timeliness

The timeliness of award fee evaluations is critical. Long delays minimize any benefits from periodic evaluations and reports. Unless evaluation results are transmitted timely and award fee payments made promptly, the results and payments may not have the desired influence on the contractor's performance during subsequent evaluation periods. The timeliness of changes in the evaluation plan is also important. Proposed changes should be processed expeditiously and the contractor notified in advance of the evaluation period to which they apply.

27. Documentation

Performance monitors should consider the following when preparing their reports. These questions can help assure evaluation data are complete and accurately assess how well the contractor performed in the monitors' assigned areas during the period.

- a. What (in the monitor's area) was the contractor supposed to do during the period? What was actually accomplished?
- b. How critical are the efforts accomplished, or not accomplished, by the contractor?
- c. What was the impact of any efforts completed early or late? How critical was the time frame involved?
- d. How well did the contractor perform the tasks that were accomplished?
- e. What are the major strengths and weaknesses (in sufficient detail to discuss with the contractor)?
- f. Were any Government-directed changes made or did any obstacles arise which impacted performance? What corrective actions were implemented? How effective were they?
- g. Has the contractor efficiently and effectively used available resources (e.g., personnel and facilities) to improve its performance?
- h. Has the contractor's performance been clearly assessed in regard to all tasks and specific objectives?
- i. On level-of-effort contracts, what has the contractor accomplished for the dollars spent (The emphasis here is to reward the contractor for accomplishments, not to reward the spending of dollars.)

The reporting formats used by monitors should be structured to ensure accuracy and clarity. Where possible, several evaluation parameters may be consolidated in a single format. Consistency can be achieved by using the same general format for all closely related work at a given activity. However, caution is required here. Carefully tailored evaluation plans can be compromised by inflexible and ill-conceived rating formats. Any format adopted should provide a place for the monitors to make narrative comments. These narrative comments provide detailed, pertinent information not addressed in the completed format. For example, they cover the circumstances under which reported performance levels were achieved, especially if these circumstances were abnormal in any way. These comments also discuss the contractor's efficiency in managing assigned personnel and other resources. Enough detail should be included in reports to the PEB to ensure that their findings and recommendations are accurate and fair and can be supported to the FDO.

Appropriate documentation is vital to support the PEB's recommendations, particularly when these recommendations differ from the conclusions reported by cognizant monitors. Minutes of meetings or other documentation should summarize the information reviewed, including any additional or explanatory information provided by the contractor and the consideration given to all such information. Since the evaluation is a judgment based upon all pertinent information, that information needs to be identified, discussed and substantiated in the documentation. The FDO will want to review the documentation to satisfy any concerns regarding contractor performance before deciding whether to accept the recommended award fee or some higher or lower amount. Examples of what the FDO might look for include:

- a. The facts that led to the assignment of a poor/unsatisfactory rating in any subfactor;
- b. The rationale for a poor/unsatisfactory rating as opposed to a satisfactory rating; and
- c. The circumstances under which a poor/unsatisfactory level was achieved and the relationships, if any, between it and any excellent performance levels reported for other subfactors.

Sufficient documentation should be provided to the FDO on which to base a decision and to explain that decision to the contractor. Similarly, the FDO must document the basis for the determination, especially in situations involving a contractor rebuttal of PEB findings and conclusions or an award fee determination different from that recommended by the PEB. Documentation of interim ratings may be less detailed since they will be superseded by the final rating at the end of the contract.

28. Payment

Final award fee payments and interim payments against interim evaluations should be made generally within 60 days after the end of the evaluation period for which payment is being made.

When the total rating for an evaluation period is "poor/unsatisfactory," no award fee is paid for that period. For example, a total award fee rating of 57 ("poor/unsatisfactory") would yield an award fee of zero, not 57 percent. For certain contracts involving delivery of a final product, such as hardware, design or study, no award fee will be paid for a final evaluation rating of "poor/unsatisfactory." In these cases, any provisional award fee payments made as a result of "satisfactory" or better ratings (61 and above) on interim evaluations are to be repaid by the contractor.

The amount of interim award fee paid each period will not exceed the interim evaluation score (applied as a percentage) or 80 percent of the award fee allocated to the period, whichever is less. No further award fee payments will be made when the CO determines that the total amount of interim payments made to date will substantially exceed the amount which would be paid based upon the anticipated final evaluation score. The PEB should be notified of such a determination. The CO's determination should be based on a comparison of award fee amounts paid to actual evaluation scores to date, projected future scores based on a combination of past performance trends and any known data which might have an influence on future performance, and any other pertinent data. Stopping award fee payment serves two purposes: it ensures that contractors will not receive award fee which they have not earned and to which they will ultimately not be entitled, and it minimizes the award fee that will be owed the Government by the contractor at the end of the contract.

29. Provisional Payments

Long evaluation periods may require FAA to make award fee payments more frequently than at the end of each evaluation period. These provisional payments, representing a percentage of the award fee amount allocated to each evaluation period, are made at regular intervals during each period. They are superseded at the end of each period by the interim or final award fee determination amount. The percentage of allocated award fee to be paid provisionally will be stipulated in the contract and may not exceed 80 percent of available award fee in any period.

Provisional payments are discontinued during any period in which the Government determines that the total provisional payments made during that period will substantially exceed the amount which would be paid based upon the anticipated evaluation score for the period. In the event the amount of provisional payments made exceeds the amount of the award fee determination for that period, the contractor will either credit the next payment voucher for the amount of the overpayment or refund the difference.

30. Contract Termination

If a contract with award fee is terminated for convenience after the start of an award fee evaluation period, the earned award fee amount should be determined by the FDO using the normal award fee evaluation process. The remaining available award fee dollars for all subsequent evaluation periods should not be considered available or earned and, therefore, should not be paid.

END

3 Appendix - Sample Award Fee Performance Evaluation Plan Revised 9/2020

SAMPLE PERFORMANCE EVALUATION PLAN

Contract No. _____ with _____

I. Introduction

II. Organizational Structure for Award Fee Administration

III. Evaluation Requirements

IV. Method for Determining Award Fee

V. Changes in Plan Coverage Attachments

III-A Evaluation Periods and Maximum Available Award Fee for Each Period

III-B Performance Evaluation Factors and Evaluation Criteria

III-B.1 Evaluation Criteria for Performance Evaluation Factor No.

III-C Grading Table

IV-A Actions and Schedules for Award Fee Determinations

IV-B General Instructions for Performance Monitors

APPROVED BY:

(Signature)

(Date)

Fee Determination Official

(Typed Name and Title)

I. Introduction

1. This plan covers administration of award fee provisions of Contract No. _____, dated _____, with _____.

The contract was awarded in accordance with the provisions of SIR No. _____.

2. The following matters, among others, are covered in the contract:

- a. The contractor is required to (brief statement describing the scope of contract).
- b. The contract term is from _____ through _____.
- c. The estimated cost of the contract is \$ _____.
- d. The base fee is \$ _____.
- e. The award fee, excluding base fee, is \$ _____.
- f. The estimated cost, base fee (if any), and award fee are subject to equitable adjustments arising from changes or other contract modifications.
- g. The award fee payable will be determined periodically by the Fee Determination Official (FDO) in accordance with this plan.
- h. Award fee determinations are not subject to the Disputes clause of the contract.
- i. Unearned award fee for each evaluation period is forfeited and cannot roll-over to subsequent periods.
- j. The FDO may unilaterally change this plan, as covered in Part V and not otherwise requiring mutual agreement under the contract, provided the contractor receives notice of the changes at least (*insert number of days*) work days prior to the beginning of the evaluation period to which the changes apply

k. The award fee will be provided to the contractor through contract modifications and is in addition to the *(type of contract)* provisions of the contract.

(Note: *The statements at 2.a through 2.f. can be revised as necessary to address any option(s)*)

II. Organizational Structure for Award Fee Administration

The following organizational structure is established for administering the award fee provisions of the contract.

1. Fee Determination Official (FDO)

a. The FDO is _____ *(insert title, not name)*.

b. Primary FDO responsibilities are: (1) Determining the award fee earned and payable for each evaluation period; and (2) Changing the matters covered in this plan, as appropriate.

2. Performance Evaluation Board (PEB)

a. The Chair of the PEB is _____ *(insert title)*. The following are voting members: _____ *(insert titles)*.

b. The Chair may recommend appointment of non-voting Members to assist the Board perform its functions.

c. Primary responsibilities of the Board are:

(1) Conducting periodic evaluations of contractor performance and submitting a Performance Evaluation Report to the FDO covering the Board's findings and recommendations for each evaluation period; and

(2) Considering changes to this plan and recommending those it determines appropriate for adoption by the FDO.

3. Performance Monitors

a. One or more monitors will be assigned to each performance area to be evaluated. The assignment will be made by the PEB Chair.

b. Each monitor will comply with the General Instructions for Performance Monitors, Attachment IV-B, and any specific instructions of the PEB Chair.
Primary responsibilities of Monitors are:

- (1) Monitoring, evaluating and assessing contractor performance in assigned areas;
- (2) Periodically preparing a Performance Monitor Report for the PEB, or others as appropriate;
and
- (3) Recommending appropriate changes in this plan for consideration.

III. Evaluation Requirements

The applicable evaluation requirements are attached as indicated below.

Requirement	Attachment
Evaluation Periods and Maximum Available Award Fee for Each Period	III-A
Performance Evaluation Factors and Evaluation Criteria	III-B
Evaluation Criteria for Performance Evaluation Factor No.	III-B.1
Grading Table	III-C

The percentage weights indicated in Attachment III-B and the Attachment III-C grading table are quantifying devices. Their sole purpose is to provide guidance in arriving at a general assessment of the amount of interim or final award fee earned. In no way do they imply an arithmetical precision to any judgmental determination of the contractor's overall performance and amount of interim or final award fee earned.

IV. Method For Determining Award Fee

A determination of the award fee earned for each evaluation period will be made by the FDO Within ____ (*insert days*) after the end of the period. The method to be followed in monitoring, evaluating and assessing contractor performance during the period, as well as for determining the award fee earned or paid, is described below. Attachment IV-A summarizes the principal activities and schedules involved.

1. The PEB Chair should ensure a monitor is assigned for each performance evaluation factor or subfactor to be evaluated under the contract. Monitors will be selected on the basis of their expertise relative to prescribed performance area emphasis. Normally, monitor duties will be in addition to, or an extension of, regular responsibilities. The PEB Chair may change monitor assignments at any time without advance notice to the contractor. The PEB Chair will notify the contractor promptly of all monitor assignments and changes.

2. The PEB Chair will ensure that each monitor receives the following:

- a. A copy of this plan along with any changes made.
- b. Appropriate orientation and guidance.

c. Specific instructions applicable to the monitors' assigned performance areas.

3. Monitors will evaluate and assess contractor performance and discuss the results with contractor personnel as appropriate, in accordance with the General Instructions for Performance Monitors, Attachment IV-B, and the specific instructions and guidance furnished by the PEB Chair.

4. Monitors will submit (*insert monthly, quarterly, etc.*) Performance Monitor Reports and, if required, make verbal presentations to the PEB.

5. The PEB Chair may request and obtain performance information from other units or personnel normally involved in observing contractor performance, as appropriate.

6. ____ (*Insert monthly, quarterly, etc.*) the PEB will consider Performance Monitor Reports and other performance information it obtains and discuss the reports and information with monitors or other personnel, as appropriate.

7. The PEB will meet (*insert monthly, quarterly, etc.*) with the contractor and discuss overall performance during the period. As requested by the PEB Chair, monitors and other personnel involved in performance evaluations will attend the meeting and participate in discussions.

8. Promptly after the end of each evaluation period, the PEB will meet to consider all the performance information it has obtained. At the meeting, the PEB will summarize its preliminary findings and recommendations for coverage in the Performance Evaluation Board Report (PEBR).

9. Then the PEB may meet with the contractor to discuss the board's preliminary findings and recommendations. As requested by the PEB Chair, monitors and other personnel involved in performance evaluation will attend the meeting and participate in discussions. At this meeting, the contractor is given an opportunity to submit information on its behalf, including an assessment of its performance during the evaluation period. After meeting with the contractor, the PEB will consider matters presented by the contractor and finalize its findings and recommendations for the PEBR.

10. The PEB Chair will prepare the PEBR for the period and submit it to the FDO for use in determining the award fee earned. The report will include an adjectival rating and a recommended performance score with supporting documentation. The contractor may be notified of the PEB evaluation and recommended rating and score. The contractor may provide additional information for consideration by the FDO. When submitting the report, the Chair will inform the FDO whether the contractor desires to present any matters to the FDO before the award fee determination is made.

11. The FDO will consider the PEBR and discuss it with the PEB Chair and other personnel, as appropriate.

12. The FDO will consider the recommendations of the PEB, information provided by the contractor, if any, and any other pertinent information in determining the amount of award fee (*insert “earned”, or “to be paid” if interim evaluations apply*) for the period. The FDO's determination of the amount of award fee ____ (*insert “earned” or “to be paid”*) and the basis for this determination will be stated in the Award Fee Determination Report (AFDR).

13. The contractor will be notified of the FDO's determination by the Contracting Officer. The contractor may be provided with a debriefing by the FDO and PEB.

14. Contract Termination. If the contract is terminated for the convenience of the Government after the start of an award-fee evaluation period, the award fee deemed earned for that period shall be determined by the FDO using the normal award-fee evaluation process. After termination for convenience, the remaining award-fee amounts allocated to all subsequent award-fee evaluation periods cannot be earned by the contractor and, therefore, must not be paid.

15. Performance Incentives. (*Omit if no performance incentives are included*) After delivery of the hardware unit(s), hardware performance will be measured and its success, or failure, determined by the Contracting Officer based on the units of measurement and associated dollar amounts which appear in contract clause H-____ (*insert appropriate clause reference*). Either positive or negative performance incentives will apply depending on whether the hardware unit's performance exceeds or falls short of the standard performance level.

V. Changes in Plan Coverage

1. Right to Make Unilateral Changes

Any matters covered in this plan not otherwise requiring mutual agreement under the contract, may be changed unilaterally by the FDO prior to the beginning of an evaluation period by timely notice to the contractor in writing. The changes will be made without formal modification of the contract if the plan is not incorporated into the contract.

2. Steps to Change Plan Coverage

The following is a summary of the principal actions involved in changing plan coverage (actions may be modified to reflect different approval/notification levels). The PEB will establish lists of subsidiary actions and schedules as necessary to meet the below schedules.

Action	Schedule (Workdays)	
PEB drafts proposed changes	Ongoing	
PEB submits recommended changes to FDO for approval		days prior to end of each period
Through CO, FDO notifies contractor about whether or not there are changes	per	days before start of the applicable iod

3. Method for Changing Plan Coverage

The method to be followed for changing the plan coverage is described below:

- a. Personnel involved in the administration of the award fee provisions of the contract are encouraged to recommend plan changes with a view toward changing management emphasis, motivating higher performance levels or improving the award fee determination process. Recommended changes should be sent to the PEB for consideration and drafting
- b. Prior to the end of each evaluation period, the PEB will submit its recommended changes, if any, applicable to the next evaluation period for approval by the FDO with appropriate comments and justification.
- c. _____ (*insert number of days*) work days before the beginning of each evaluation period, the contracting officer will notify the contractor in writing of any changes to be applied during the next period. If the contractor is not provided with this notification, or if the notification is not provided within the agreed-to number of work days before the beginning of the next period, then the existing plan will continue in effect for the next evaluation period.

ATTACHMENT III-A to PEP for Contract No. _____ with _____

Evaluation Periods and Maximum Available Award Fee for Each Period

Period Number		Start Date		End Date		Max. Available Award Fee
1						\$
2						\$
3						\$

ATTACHMENT III-B to PEP for Contract No. _____ with _____

Performance Evaluation Factors and Evaluation Criteria

The performance factors to be evaluated are identified below. The evaluation criteria for each factor are attached, as indicated.

Area No	Brief Factor Identification	Factor Weight	See Attachment
1			III-B.1*
2			
3			
4			

5			
---	--	--	--

* A separate attachment should be prepared for each factor.

ATTACHMENT III-B.1 to PEP for Contract No. _____ with _____

Evaluation Criteria for Performance Evaluation Factor No. ____

(Factor Identification Per Attachment III-B)

Factor Weight _____

Description of Factor:

Subfactors to Consider:

Evaluation Criteria: Criteria

Weights:

Basis or Standard for Measuring Performance:

ATTACHMENT III-C to PEP for Contract No. _____ with _____

Grading Table

Adjectival Rating		
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Range of Performance

Description	Points	
Excellent	(100-91)	Of exceptional merit; exemplary performance in a timely, efficient and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance.
Very Good	(90-81)	Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient and economical manner for the most part; only minor deficiencies.
Good	(80-71)	Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance.
Satisfactory	(70-61)	Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance.
Poor/ Unsatisfactory	(less than 61)	Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance.

Any factor receiving a grade of “poor/unsatisfactory” (less than 61) may be assigned zero performance points for purposes of calculating the award fee amount. The contractor will not be paid any award fee when the total award fee score is "Poor/Unsatisfactory" (less than 61).

ATTACHMENT IV-A to PEP for Contract No. _____ with _____

Actions and Schedules for Award Fee Determinations

The following is a summary of the principal actions involved in determining the award fee for the evaluation periods.

Action	(Workdays)
1. PEB Chair and members appointed.	_____ days prior to first period
2. PEB Chair appoints performance monitors and informs contractor.	_____ days prior to first period
3. Monitors receive orientation and guidance.	_____ days prior to first period
4. Monitors assess performance and discuss results with contractor.	Ongoing after start of period
5. Monitors submit Performance Monitor reports to PEB.	Last day of each ____ (insert month, quarter, etc.)
6. PEB considers Performance Monitor reports and other requested performance information.	Ongoing

7. PEB discusses overall performance with contractor during period.		days after end of period of each _____(insert month, quarter, etc.)
8. PEB meets and summarizes preliminary findings and position of PEBR.		days after end of period
9. PEB may meet with contractor to discuss preliminary findings and position.		days after end of period
10. PEB establishes findings and recommendations for PEB report.		days after end of period
11. PEB Chair submits PEB report to FDO.		days after end of period
12. FDO considers PEB report and discusses with PEB, as appropriate.		days after end of period
13. FDO sends PEB report to contractor.		days after end of period
14. Payment made to contractor based on contract modification.		days after end of period

The PEB may establish lists of subsidiary actions and schedules as necessary to meet the above schedules.

ATTACHMENT IV-B to PEP for Contract No. _____ with _____

General Instructions for Performance Monitors

1. Monitoring and Assessing Performance

a. Monitors may prepare outlines of their assessment plans, discuss them with appropriate contractor personnel to assure complete understanding of the evaluation and assessment process.

b. Monitors may plan and carry out on-site assessment visits, as necessary.

c. Monitors may conduct all assessments in an open, objective and cooperative spirit so that a fair and accurate evaluation is obtained. This will ensure that the contractor receives accurate and complete information from which to plan improvements in performance. Positive performance accomplishments should be emphasized just as readily as negative ones.

d. The monitor may discuss the assessment with contractor personnel as appropriate, noting any observed accomplishments and/or deficiencies. This affords the contractor an opportunity to clarify possible misunderstandings regarding areas of poor performance and to correct or resolve deficiencies.

e. Monitors must remember that contacts and visits with contractor personnel are to be accomplished within the context of official contractual relationships. Monitors may avoid any activity or association which might cause, or give the appearance of, a conflict of interest.

f. Monitor discussions with contractor personnel are not to be used as an attempt to instruct, to direct, to supervise or to control these personnel in the performance of the contract. The role of the monitor is to monitor, assess and evaluate not to manage the contractor's effort.

2. Documenting Evaluation/Assessment

Evaluations and assessments conducted and discussions with contractor personnel may be documented as follows:

3. Evaluation/Assessment Reports

Monitors may prepare a formal Performance Monitor Report in accordance with the following instructions and submit it to the PEB. (*Specify format, frequency of submission and minimum information requirements*)

4. Verbal Reports

Monitors need to be prepared to make verbal reports of their evaluations and assessments as required by the PEB Chair.

END

4 Appendix - Incentive Contracts Guide Added 4/2010

1. Introduction

The purpose of this guide is to further explain incentive contracts, provide examples, and other considerations for using incentive contracts. This guide:

- ☐ Provides general guidance on when an incentive contract may be appropriate;
- ☐ Describes elements of the required cost incentive and how the elements influence profit/fee earned by a contractor, depending on the cost incurred;
- ☐ Describes the general characteristics of a performance incentive and delivery incentive;
- ☐ Provides general guidance for structuring multiple (i.e., having a cost incentive and performance and/or delivery incentives) incentive contracts;
- ☐ Provides general guidance on Fixed-Price Incentive (FPI) contracts including the importance of the Point of Total Assumption (PTA);
- ☐ Provides general guidance on FPI contracts with a firm target, and FPI with successive targets;
- ☐ Provides general guidance on Cost-Plus-Incentive-Fee (CPIF) contracts including impact of minimum and maximum fee established;
- ☐ Provides general guidance on negotiating changes to incentive contracts including possible negotiation methods and circumstances in which they would be appropriate.

2. General

(a) Incentive contracts are appropriate when supplies or services can be acquired at lower costs, and in certain instances with improved delivery or technical performance, by relating the amount of profit/fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific program objectives by:

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to motivate contractor efforts that might not otherwise be emphasized, and to discourage contractor inefficiency.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, profit/fee:

(1) Increases only for achievement that surpasses the targets, and

(2) Decreases to the extent that such targets are not met.

The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive and cost-plus-incentive-fee.

(d) Fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. It is usually in the Government's interest for a contractor to assume substantial cost responsibility and an appropriate share of the cost risk, thus the preference for fixed price incentive contracts.

(e) Award-fee contracts are a separate type of incentive contract and are discussed separately under Appendices 2 and 3 of this Section T3.2.4.

3. Cost Incentives

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula. Cost incentives are intended to motivate the contractor to effectively manage costs. An incentive contract cannot provide for other incentives without also providing a cost incentive (or constraint).

(b) Incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that provides (within the constraints of a price ceiling or minimum and maximum fee):

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

(c) An example of a cost incentive (in a fixed-price incentive contract) based on the above is as follows:

Target Cost \$10,000,000
Target Profit \$1,000,000
Target Price \$11,000,000
Share Ratio 70/30 (Government/contractor) Ceiling
Price 115% of Target Cost (\$11,500,000)

Actual cost of \$10,000,000 would meet target cost. This results in the contractor earning the target profit of \$1,000,000 because the contractor met the target cost. \$11,000,00 would be paid to the contractor in total (\$10,000,000 target cost + \$1,000,000 target profit).

Actual cost of \$11,000,000 would exceed target cost. This results in the contractor being responsible for its share of 30% of the amount over the target cost ($\$1,000,000 \times 30\% = \$300,000$). This amount of \$300,000 is deducted from the target profit of \$1,000,000 for a total of \$700,000 profit. Instead of being paid a total of \$11,700,000, the contractor would be paid \$200,000 less because of the ceiling price (\$11,500,000) – reducing the profit from \$700,000 to \$500,000.

-Actual cost of \$9,000,000 would be under target cost. This results in the contractor earning an additional 30% of the amount below the target cost ($\$1,000,000 \times 30\% = \$300,000$) in addition to the target cost for a total of \$1,300,000 profit. \$10,300,000 would be paid to the contractor in total.

4. Performance Incentives

(a) Performance incentives may be considered with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit/fee to a contractor's achievement, compared with specified targets.

(b) When practicable, positive and negative performance incentives should be considered with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(c) Technical performance incentives may be particularly appropriate in major or complex systems, both in development (when performance objectives are known and the fabrication of prototypes for

test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the Government).

(d) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(f) Because performance incentives present complex problems in contract administration, the Contracting Officer (CO) should negotiate them in full coordination with Government technical and pricing specialists.

(g) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the applicable Changes clause) will have on performance incentives.

This will be dealt with in more detail in Section 11 below.

(h) The CO must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(i) *A basic example of a performance incentive is as follows:*

Maintenance Hours per Operational Hour – Total Possible Incentive \$120,000
Minimum Value – 10 hours – 0% of incentive earned
Average Value – 5 hours – 50% of incentive earned (\$60,000)
Maximum Value – 2 hours – 100% of incentive earned (\$120,000)
Penalty if > 10 hours -\$10,000

In the example above, if the contractor failed to meet the minimum value of 10 hours per operational hour, they would not receive any of the possible \$120,000 in incentives. Additionally, a negative incentive of \$10,000 would be deducted from the negotiated value of the contract.

5. Delivery Incentives

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (*e.g.*, earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

(c) *A basic example of a delivery incentive is as follows:*

The total schedule incentive available must be defined in the contract with specifics as to Contract Line Item, Period of Performance etc. as needed. For this example, the total incentive amount available is \$100,000.

Delivery Incentive Milestones:

Positive Incentives

20% of available incentive for completion of Critical Design Review (CDR) at least two (2) weeks ahead of schedule (\$20,000)

20% of available incentive for passing Design Qualification Test (DQT) at least two (2) weeks ahead of schedule (\$20,000)

15% of available incentive for passing site acceptance test at least two (2) weeks ahead of schedule (\$15,000)

45% of available incentive for achieving Initial Operational Capability (IOC) at least two (2) weeks ahead of schedule (\$45,000)

Negative Incentives

20% of available incentive for not achieving completion of Critical Design Review (CDR) on schedule (-\$20,000) 45% for not achieving IOC on schedule (-\$45,000)

The schedule for the milestones as well as what the achievement of each milestone involves must be clearly defined in the contract. For example, if the contractor fails to meet the first milestone, they lose \$20,000 due to the negative incentive. If they do not meet the second, there would be no impact as there is no negative incentive. If they meet the third at least two weeks ahead of schedule, there would be a positive incentive of \$15,000 earned. Meeting the last and most important milestone at least two weeks ahead of schedule would earn \$45,000 for total schedule incentive earnings of \$40,000.

6. Structuring Multiple-Incentive Contracts

A properly structured multiple-incentive arrangement should-

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical

performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

(c) While not requiring as much administrative effort as an award fee contract, an incentive contract with multiple incentives requires some administrative effort to track how the contractor is performing in relation to the cost incentive and to the performance and/or delivery incentive. Before entering into a multiple incentive contract, Agencies must determine whether the amount of additional administrative effort is offset by potentially improved performance by the Contractor.

(d) *A basic example of a multiple incentive contract is as follows (applicable to either Fixed-Price Incentive or Cost-Plus-Incentive-Fee):*

Target Cost \$100
Target Profit (Fee) \$7
Target Price \$107
Share Ratio 75/25
Performance Incentive Reward +\$3
Performance Incentive Penalty -\$1
Schedule Incentive Penalty -\$1

Cost of \$84 and maximum performance on schedule – profit is \$14 (\$16 under Target cost X 25% share = \$4 + \$7 Target Profit +\$3 Performance Incentive Reward).

Cost of \$116 and acceptable performance with late delivery – profit is \$2 (\$16 over Target Cost X 25% share = \$4 subtracted from \$7 = \$3 less \$1 Schedule Incentive Penalty)

Cost of \$116 and maximum performance with late delivery – profit is \$5 (\$16 over Target Cost X 25% share = \$4 subtracted from \$7 = \$3 less \$1 Schedule Incentive Penalty plus \$3 Performance Incentive Reward)

7. Fixed-Price Incentive (FPI) Contracts

(a) *Description.* A FPI contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.

(b) *Application.* A FPI contract is appropriate when-

(1) A FFP contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Billing prices.* In FPI contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost.

(d) *Point of Total Assumption.* The Point of Total Assumption (PTA) in FPI contracts is the point where cost increases that exceed the target cost are no longer shared by the Government according to the share ratio. At the PTA, the contractor's profit is reduced one dollar for every additional dollar of cost. The PTA is calculated as follows:

$$PTA = (\text{Ceiling Price} - \text{Target Price}) / \text{Government Share} + \text{Target Cost}$$

An example of a PTA calculation is as follows:

Target Cost \$50,000,000
Target Profit \$4,500,000 (9%)
Target Price \$54,500,000
Ceiling Price 125% of Target Cost = \$62,500,000
Share Ratio 70/30

$$PTA = (\$62,500,000 - \$54,500,000) / 70\% + \$50,000,000$$

$$PTA = \$8,000,000 / 70\% + \$50,000,000$$

$$PTA = \$11,428,571 + \$50,000,000 = \$61,428,571$$

Thus, cost increases beyond the PTA of \$61,428,571 are no longer shared by the Government in accordance with the share ratio – the contractor's profit will be reduced one dollar for every additional dollar of cost beyond the PTA.

(e) *General Considerations:*

(1) The higher the Government share and the higher the ceiling price, the lower the overall incentive for the contractor to control costs since they have more ability to recover such costs; and

(2) Conversely, the lower the Government share and the lower the ceiling price, the higher the overall incentive for the contractor to control costs since they have less ability to recover such costs

8. Fixed-Price Incentive (Firm Target)

(a) *Description.* A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) *Applicability:* A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

(c) *Limitations.* This contract type may be used only when-

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(d) *Contract schedule.* The CO should specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision. Following the completion of performance, the parties negotiate the final cost, and the final price is established by applying the formula.

(e) *An example of a Fixed-Price Incentive (Firm Target) contract is under Section 7 above.*

9. Fixed-Price Incentive (Successive Targets) Contracts

(a) *Description.*

(1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract.

(b) *Application.* A fixed-price incentive (successive targets) contract is appropriate when-

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either (i) a firm fixed price or (ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

An example of a situation where this contract type may be appropriate is where long lead time requirements may make it necessary in the acquisition of a new system to contract for a follow-on quantity before design or production stability has been achieved.

(c) *Limitations.* This contract type may be used only when-

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(d) *Contract schedule.* The CO should specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

(e) Overall considerations for the use of fixed-price incentive (successive targets) are as follows:

(1) Successive targets are used when uncertainties do not permit the negotiation of a firm arrangement;

(2) The ability to establish a firm pricing arrangement is not limited by the availability of cost or pricing data from the contract itself.

(3) Data may be drawn on as it becomes available from other contracts for the same or similar equipment/services; and

Because this type of contract is negotiated when cost and pricing information is not sufficient to allow negotiation of a firm arrangement, contract performance uncertainties are greater than they would otherwise be the case in a fixed-price type of contract. A realistic pricing arrangement would thus not provide as great a degree of contractor cost responsibility as under a FPI contract.

A basic example of a Fixed-Price Incentive (Successive Targets) contract is as follows:

Initial Target Cost	\$15,000,000
Initial Target Profit	\$1,200,000
Initial Target Price	\$16,200,000
Initial Share Ratio	95/5

Ceiling on Firm Target Profit \$1,350,000

Floor on Firm Target Profit \$1,050,000

Price Ceiling \$19,500,000

At the production point in the contract, if the cost is \$14,500,000, the firm target profit would be determined as follows:

Initial Target Cost \$15,000,000

Negotiated Cost \$14,500,000

Difference \$500,000 (decrease) Contractor's Share

\$25,000 (increase) Initial Target Profit \$1,200,000

Firm Target Profit \$1,225,000

At this point, there are two alternatives: Using the negotiated cost of \$14,500,000 and the firm target profit as guides, a firm-fixed-price may be negotiated. If this is not possible, or if the parties agree that uncertainties under the remaining part of the contract make this unfeasible, a fixed-price incentive with firm targets may be negotiated. The ceiling price cannot be

increased at this point but it may be *decreased* where firm target costs are lower than initial target costs. With a revised ceiling price of \$16,700,000 and a new share ratio of 60/40 negotiated, the following is established:

Target Cost	\$14,500,000
Target Profit	\$1,225,000
Target Price	\$15,725,000

Ceiling Price \$16,700,000

Share Ratio 60/40

The final settlement at contract completion would be done as for the firm target contract described in Section 8.

If the parties negotiated an estimated cost of \$17,000,000 at the production point, firm target profit would be determined as follows:

Initial Target Cost	\$15,000,000
Negotiated Cost	\$17,000,000
Difference	\$2,000,000 (increase)
Contractor's Share	\$100,000 (decrease) Initial
Target Profit	\$1,200,000
Firm Target Profit	\$1,100,000

If a FFP contract was not appropriate, and a sharing formula of 75/25 were negotiated, a firm incentive agreement could be set up as follows:

Target Cost	\$17,000,000
Target Profit	\$1,100,000
Target Price	\$18,100,000
Ceiling Price	\$19,500,000
Share Ratio	75/25

10. Cost-Plus-Incentive-Fee (CPIF) Contracts

(a) *Description.* The CPIF contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. Unlike FPI contracts, there is no ceiling price under this contract type.

After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) *Application.*

(1) A CPIF contract is appropriate for services or development and test programs when:

(i) A cost-reimbursement contract is necessary where uncertainties in the work under contract make a FPI contract impracticable; and

(ii) A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

(3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract must also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(c) *Limitations.* No CPIF contract shall be awarded unless the contractor has an adequate accounting system for that type of contract.

(d) Additional considerations for use of this contract type are as follows: Because of the interrelationship between negotiated fee levels and the sharing arrangement, the wider the range between minimum and maximum fees, the greater the contractor's share percentage under the formula without limiting the range of cost variation over which the incentive is effective.

Examples of a CPIF contract are as follows:

Target Cost \$10,000,000
Target Fee \$750,000
Maximum Fee \$1,350,000
Minimum Fee \$300,000
Share Ratio 85/15

(1) Actual cost of \$10,000,000 results in the contractor earning the target fee of \$750,000 since the contractor has met the target cost. \$10,750,000 would be paid to the contractor in total.

(2) Actual cost of \$11,000,000 above the target cost results in the contractor being responsible for 15% of the amount over cost (\$150,000) which is deducted from the target fee for a total of \$600,000 fee. This is within the minimum and maximum fee limits specified above.

(3) Actual cost of \$9,000,000 below the target cost results in the contractor earning an additional \$150,000 in fee above the target fee (\$900,000). This is within the minimum and maximum fee limits specified above.

11. Impact of Contract Changes

When work required under a contract is changed under the “Changes” clause or other appropriate clause of an incentive contract – either increased or decreased – adjustments may be negotiated to the target cost, target fee, share ratio, etc. as appropriate. Performance and/or schedule incentives may also be similarly renegotiated. Since late definitizations of contract changes can adversely affect the integrity of the incentive contract structure, agreements on the pricing and incentive aspects of contract changes should be negotiated as soon as possible.

Four possible methods of making equitable adjustments to incentive contracts are as follows: (a) Constant dollar – where the same dollar adjustment is applied to target, maximum and minimum fee or profit and ceiling price;

(b) Constant percentage – where the percentage of minimum and maximum fee or the percentage of ceiling price over target cost is held constant. The constant dollar and constant percentage methods are similar except for differences in fee/profit earned at the extremes of ranges above or below the target cost;

(c) Individual element – determining the effect of the change on each element such as target cost, target fee, and ceiling price individually. This is appropriate where the degree of uncertainty varies significantly between the original contract and the changed portion. There is a flexibility to tailor the specifics of the incentive to the change; however, the disadvantage is that more administrative effort is often needed to evaluate and negotiate each individual element; and

(d) Severable change – where the change is isolated from the incentive provisions with a separate agreement reached on the change portion. This method is most appropriate where the changed portion is completely different in terms of technical and cost risk than the original contract. For instance, the contract may be CPIF while the new work may be FPI.

Overall, the method chosen depends on the extent and nature of the change as well as its impact upon the individual incentive contract elements.

Section Revised:

3.2.6 A 1 – Purchase Card

Procurement Guidance - (~~9/2020~~ 10/2020)

[T3.2.6 - Purchase Card Program](#) Revised 4/2016

[A Purchase Card Program](#) Added 1/2009

[1 Purchase Card](#) Revised ~~4/2020~~ 10/2020

[2 Convenience Checks](#) Revised 4/2016

[B Clauses](#) Added 1/2009

[C Forms](#) Added 1/2009

T3.2.6 - Purchase Card Program Revised 4/2016

A Purchase Card Program Added 1/2009

1 Purchase Card Revised 4/2020

a. *Overview.* The FAA purchase card (i.e. SmartPay Card) is an internationally accepted credit card issued through a General Services Administration (GSA) contract. The purchase card is designed to streamline purchases and reduce procurement time and processing costs. The guidance is in compliance with OMB Circular A-123-Appendix B, GSA SmartPay Program for Purchase Card Use and Management.

(1) FAA employees who receive training and delegated authority are authorized to use the card, within the specified dollar limits, to acquire products and services.

(2) Simplified purchases with a total estimated potential value (TEPV) under the applicable micro-purchase threshold must be performed using the purchase card. The micro-purchase threshold is \$10,000 for commercial supplies, construction and services.

(3) The Purchase Card (PCard) Module in the PRISM Acquisition System is the mandatory program for purchase card requisitions, orders and required documentation for all purchase card transactions.

b. Duties.

(1) An Approving Official (AO) must be a Government manager and in the same chain of command as his or her cardholders, unless waived by the National Purchase Card Program Manager. The AO is responsible for the following activities:

(a) Approve new purchase cardholder application and spending limits and submit a justification of the need for a new purchase card account to the Agency Program Coordinator (APC).

(b) Review all purchase card transactions prior to the purchase (and after the purchase in US Bank see j below) and ensure accuracy of information and that all required documentation is included for each transaction.

(c) Notify the Agency Program Coordinator (APC) when a cardholder retires, leaves FAA, transfers to another office, or no longer requires a purchase card.

(d) Establish procedures to ensure that cardholder purchase card files are retained when a cardholder retires, transfers to another office, or leaves FAA.

(e) Submit written requests to the APC to change the cardholder's single and/or monthly purchase limit.

(f) Review all purchase card transactions and ensure accuracy of information

(g) Ensure that all transactions are for a bona fide need of the Government.

(h) Report fraudulent or improper use of the purchase card to the National Purchase Card Program Manager and APC.

(i) Review and final approve cardholder's transactions in US Bank Access Online within 45 days of the close of the billing cycle. All transactions must be final approved (including fraud and disputed transactions) to ensure funds are expended from the correct appropriation code.

(j) Ensure that the mandatory PRISM PCard Module is used for all Purchase Card Transactions.

(k) Safeguard the bank's user IDs and passwords. The AO must not share user IDs and passwords.

(l) Ensure that items purchased through the purchase card are the same as those approved. The cardholder is to provide to the AO a justification for any differences.

(m) Verify cardholder has submitted property information to the Property Custodian for input in the AITS system before final approving a transaction in US Bank Access

(n) Establish and continually monitor internal controls to ensure that the prior approval of purchases and funds certification are obtained by cardholders and key duties of the program are properly segregated

(2) *Cardholder*: A Government employee who uses the purchase card to make purchases and is responsible for the following activities:

(a) Safeguard the purchase card and account number. Only the individual whose name appears on the card is authorized to make purchases on that purchase card. Allowing someone other than the cardholder to use the card, or sharing passwords to obtain products and services, is considered an unauthorized purchase that is subject to disciplinary action as outlined in the Human Resources Operating Instructions (HROI) Table of Penalties, ER-4.1, Section 27a .

(b) Obtain prior approval from the approving official and funds certifier before making a purchase.

(c) Ensure the accounting classification code (correct object class codes) for each item to be procured has been certified by a funds certifier before the purchase is made. Each cardholder has a primary use or "default" accounting classification code based on organization and the primary use of the card.

- (d) Include a justification and description for each purchase so that it can be easily understood by someone that is reviewing the purchase.
- (e) Provide copies of source documents (i.e., invoice, purchase order, etc.) relating to purchases of accountable personal property to appropriate personnel.
- (f) Abide by, and never exceed their single and monthly purchase limits. Purchases must not be “split” to circumvent single purchase limits.
- (g) Review and validate all charges against their sales slips, review any credits on the statement, and dispute charges for purchases not received.
- (h) Review and approve transactions in US Bank Access Online within 45 days of the close of the billing cycle. All transactions must be final approved (including fraud and disputed transactions) to ensure funds are expended from the correct appropriation code.
- (i) Notify the APC as part of the exit clearance process when retiring or leaving FAA, and properly destroy issued cards and convenience checks.
- (j) Ensure that the mandatory PRISM PCard Module is used for all Purchase Card Transactions. This is also the official repository for all required transaction documentation which will be maintained for 6 years and 3 months.
- (k) Provide justification to the AO for any discrepancies with the transaction to include amount charged, product defects, shipping issues, return issues, credits, etc. Maintain a copy of the justification with the transaction documentation.
- (l) Review and validate charges against sales receipts and invoices; review credits online and dispute transactions as applicable (e.g. amount charged, incomplete orders, etc.).
- (m) Splitting transactions/orders to stay within single or monthly limits or other applicable thresholds (including competition, services, construction or check writing limits) is prohibited.
- (n) Upon separating from the agency or the purchase card program, cardholders must:
 - (i) Ensure clearance forms are signed by APC;
 - (ii) Review purchase card files for accuracy;
 - (iii) Ensure all transactions posted to US Bank have the designation "Final Approved;"

(iv) Forward all purchase card files to the AO; and

(v) Destroy the purchase card and checks.

(o) Review and reconcile transactions in US Bank.

(p) Immediately report lost and/or stolen purchase card or checks to US Bank and the APC.

(q) Verify items have been received by documenting the transaction file with receipt date and recipient.

(r) Adhere to Accountable Property policy in section 3 below.

(3) Agency Program Coordinator APC's are responsible for implementing the day to day bank activities of the card program. APC's are responsible for the following:

(a) Establishing and terminating accounts

(b) Issuing cards and/or convenience checks

(c) Liaison between the National Purchase Card Manager, the Bank and the Cardholder for account activities

(d) Monitoring and control of lost/stolen accounts

(e) Process changes to accounts

(f) Closeout out accounts due to inactivity, retirement, transfer and resignation from FAA

c. Single and Monthly Purchase Limit. Single Purchase Limits are delegated based on the operational need of FAA, the training completed by the cardholder and the experience of the cardholder purchasing items for the Federal Government. The completion of training does not automatically secure an increased authority to use the purchase card.

(1) Cardholders will receive an initial delegation detailing general authority and responsibilities, but applicable single and monthly purchase limits will be identified and available in US Bank Access.

(2) The Purchase Card Office may grant higher limits, either permanently or temporarily, if presented with a written justification establishing an unusual or compelling need.

(3) Prior to being delegated permanent single purchase limits exceeding \$10,000, cardholders must complete additional training requirements (detailed below) commensurate with the additional authority.

d. Initial Training and Experience.

(1) Cardholder and Approving Officials

(a) Must complete the following and provide copies of training certificates to the APC before a purchase card will be issued:

- (i) Maintain It: Your FAA Purchase Card (FAA30060016 eLMS course); and
- (ii) GSA SmartPay 2 Purchase Card Training- online.

(b) In addition to the training requirements above, cardholders must complete the following before a purchase card will be issued with a permanent single purchase limit over \$10,000: Approving Officials that approve cardholders delegated a single purchase limit over \$10,000 will also have to take the additional training below.

(i) The FAA Purchase Card: Get It, Use It, Keep It (FAA30060015)

(ii) CON 100- Shaping Smart Business Arrangements;

(iii) CON 237- Simplified Acquisition Procedures or AQN SPB Simplified Acquisition Procedures Basic; and

(iv) CLC 004- Market Research.

(c) *Experience.* To be considered for a single purchase limit over \$10,000, the cardholder must submit evidence of at least 1 year purchasing experience (using a purchase card, contract or other procurement tool) in the Federal Government.

e. Refresher Training.

(1) Purchase Card Refresher training must be completed by each AO and cardholder every 2 years using the eLMS course Maintain It: Your FAA Purchase Card (FAA30060016).

(2) The National Purchase Card Program Manager is responsible for monitoring the proper completion of required refresher training.

(3) AOs and cardholders failing to meet refresher training requirements will have their authority suspended until required training is completed.

f. *Separation of Duties.* Key duties and responsibilities in purchasing, certifying availability of funds, and approving transactions should be separated among individuals. The following conditions apply in the processing of a purchase card transaction:

(1) The AO is the last person to approve the individual purchase after the cardholder obtains certification of funds;

(2) The AO must approve the justification of each individual transaction for need and accuracy;

(3) An individual must never perform all duties;

(4) An AO and fund certifier must not perform both approval and fund certification for the same purchase; and

(5) The cardholder must never be the AO and/or fund certifier.

g. *Mandatory Sources and Other Requirements*

(1) When using the purchase card, cardholders must consider the following requirements:

(a) *Strategic Sourcing Initiatives.* (See AMS Procurement Guidance T3.8.6).

(b) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR).* (See AMS T3.8.4)

(c) *Randolph-Sheppard Act.* (See AMS Procurement Guidance T3.8.4)

(d) *Javits-Wagner-O'Day Act (JWOD).* (See AMS Procurement Guidance T3.8.4)

(e) *Section 508 Requirements.* (See AMS Procurement Guidance T3.2.2)

(f) *Environmental Requirements.* (See AMS Procurement Guidance T3.6.3 for additional information)

(2) If mandatory sources are applicable and not used, the transaction file must document how mandatory sources were sought and the reasons why a non-mandatory source was chosen.

h. *Split Purchase.* A split purchase is a procurement made to avoid established purchase limits, to include single purchase limits and competition thresholds.

(1) Split purchases may also include procurement intended to avoid limits governing the use of the purchase card for construction (\$10,000) or services (\$10,000). It is not necessary for the purchase to be in the same day or made by the same cardholder to qualify as a split purchase. One-time increases can be authorized by the Purchase Card Office.

i. *Use of the Purchase Card as a Payment Vehicle.*

(1) The purchase card may be used as a payment tool against an existing signed contract, lease, or order. This allows users to utilize the purchase card's streamlined payment characteristics when its use alone may be otherwise restricted.

(2) When the purchase card is being used as a payment vehicle against a contract, lease or order, all terms and conditions must be established in writing and be signed by both a Contracting Officer (CO) and the vendor. The contract, lease or order must specifically authorize the use of the purchase card as a payment tool. If the contract, lease or order does not authorize in writing the purchase card as a payment tool, the purchase card cannot be used.

(3) Payments must not exceed the cardholder's Single Purchase Limit.

(4) Each payment made using the purchase card against an existing signed contract, lease, or order must include:

(a) Information regarding the source contract, lease, or order, to include the contract/lease/order number, CO, award date, period of performance or delivery date, and proof of funds availability;

(b) A copy of the terms and conditions in the contract, lease, or order authorizing the use of the card;

(c) A copy of the invoice or request for payment;

(d) Proof of delivery;

(e) Evidence that the CO authorizes payment; and

(f) Prior approval by the Approving Official (AO) authorizing the use of the card.

(5) Purchase cards cannot be used to pay for unauthorized commitments without appropriate documentation showing that the unauthorized commitment has been ratified in accordance with AMS Guidance T3.1.4A.6.

j. *Services Procured Using a Purchase Card.*

(1) The purchase card may be used to procure services under the following guidelines:

(a) The services are exempted from the ~~Service Contract Act (SCA)~~Service Contract Labor Standards (SCLS), as detailed under AMS Procurement Guidance T3.6.2, and do not exceed the cardholder's Single Purchase Limit. Services exceeding \$10,000 in which ~~SCA~~SCLS is applicable in accordance with AMS Procurement Guidance T3.6.2 must not be purchased using the purchase card.

(b) The services are incidental to a supply purchase and the total purchase price is below the micro-purchase threshold for supplies. Supply purchases with incidental services above the micro-purchase threshold must be approved by the Purchase Card Office.

(c) *Recurring Services.*

(i) The service requirement does not exceed one (1) year, and the total value for the year does not exceed the cardholder's Single Purchase Limit.

(ii) For any recurring service, the total dollar value of the service must be established at the time of the initial order, despite payment being made monthly

(iii) If the SCA applies to the service requirement, the total value of the service must not exceed \$10,000 for the year.

(iv) The certification of funds availability must be sufficient to cover the entire term of the service, but cannot exceed one year.

(2) Purchase cards must not be used to enter into agreements containing terms and conditions that include termination costs or option periods, or which may incur any contingent liabilities (liabilities that are based on whether or not a future event occurs).

(3) Purchase cards must not be used to procure personal services. Personal service procurements create an employer-employee relationship between FAA and the contractor's personnel (see AMS Procurement Guidance T3.8.2).

(4) The purchase card must not be used to enter into equipment or other types of leases, unless the procurement is through a FAA contract and/or strategic sourcing initiative (e.g. SAVES [Strategic Sourcing for the Acquisition of Various Equipment and Supplies]).

(5) Maintenance agreements are not considered leases, and may be procured using the purchase card.

(6) The purchase card may be used as a payment vehicle against existing service contracts or agreements signed by a CO.

k. *Construction Procured Using a Purchase Card.*

(1) "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.

(2) The purchase card may be used to procure construction totaling \$10,000 or less, as long as it does not exceed the cardholder's Single Purchase Limit.

(3) The value of a construction project includes all related work, and may involve multiple purchases (i.e. multiple purchases towards the completion of a single construction project are included in the total value of the work).

(4) Any construction project procured using the purchase card must have simple terms and not require modifications and specifications that could result in the requirement exceeding \$10,000.

(5) The purchase card may be used as a payment vehicle against an existing construction contract signed by a CO.

1. *Competition.*

(1) *\$10,000 or less.* Competition is not required for purchases of \$10,000 or less.

(2) *In excess of \$10,000.* For approved actions that value in excess of \$10,000, applicable AMS requirements for competition or single source procurement apply. See AMS Procurement Guidance T3.2.2.4.

m. *Rational Basis.* Purchasers should have a rational basis for purchasing decisions. As the value of a purchase increases, the documentation supporting the purchase should increase as well. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A:4, Considerations for Restricted Purchases), then the purchaser must, despite the dollar value of the purchase, document the basis and background for the purchase. The cardholder should also document the background for actions that would appear questionable to a reasonable and prudent person with market knowledge of the products or services being purchased.

n. *US Bank Access Comments Fields.* Cardholders must enter required data into US Bank Access comments fields.

(1) *Comments Field 1:* PCPS Number, Financial Tracking/Cuff Record System Number (e.g. REGIS Number), Accountable property information (e.g. AITS Number), other explanatory information (e.g. fraudulent transaction, emergency purchase, disputed item information, etc.).

(2) *Comments Field 2*: Description of the item or service.

(3) *Comments Field 3 (Recovery Act)*: Description of purchases made using funds received from the American Recovery and Reinvestment Act.

(4) *Comments Fields 4 (Identifier for Item Below) and 5 (Item of National Interest)*: Description of purchases made during declared emergencies (e.g. supplies purchased during hurricanes or other disasters).

o. *Documentation.*

(1) Documentation supporting purchase card transactions must be uploaded into the PRISM PCard Module and will be retained for 6 years, 3 months from the transaction date.

(2) All cardholder PRISM transaction files should include but not limited to:

(a) Certification of prior approval. The cardholder will obtain confirmation of any verbal approval within 10 days of receiving the verbal approval.

(b) Certification of funds availability. Funds certification officers must provide a documented certification of funds availability prior to any purchase. This can be done on a quarterly, semi-annual or annual basis.

(c) A sales slip, invoice, or order confirmation.

(d) Rational basis.

(e) Receipt of goods or services, signed and dated by recipient.

(f) Dispute Notes

(g) Any special approvals on restricted transactions i.e. water, SAVES waivers, etc.

(h) Documentation to the purchase that explains more details if needed to include notes, emails, tax information, or backup notes to the purchase card file for problematic or cumbersome transactions that may have additional questions

(i) *Independent Receipt of Goods.*

(i) Where the cardholder is also the receiver, another FAA employee (except for the AO) must confirm receipt of the goods or services by signing and dating the sales slip or invoice.

(ii) Except for items considered sensitive or pilferable, confirmation of receipt of goods or services is not required where the unit price is less than \$5,000 or

the item is being incorporated into a project for a fixed asset (e.g., buildings and other structures).

(iii) Items that are considered sensitive or pilferable include, but are not limited to:

Weapons	Computer hard drives
Firearm periphery equipment such as scopes	External disc drives
Ammunition	Personal Data Assistants (PDA)
Cell phones	Secure fax machines
Pagers	Recording equipment
Encrypted phones	Cameras, non-disposable
Two-way radios.	Test equipment
Laptop computers	Laboratory and medical Equipment

(j) Check for exceptions to prohibited purchases (see AMS Procurement Guidance T3.2.2.5.A.2 and this section).

(k) Additional supporting documentation needed for special transactions such as training, convenience checks, etc.

(3) *Accountable Property.*

(a) *Process.* Cardholder purchase card transaction source documentation must be routed as follows:

(i) Cardholder must provide a suspense copy of the purchase card order (documented proof of prior approval) for accountable personal property to the Property Delegate (Property Custodian) in the gaining organization after placing the order.

(ii) After receiving the property, the cardholder should obtain from the person receiving the items documentation (invoices, sales slips, packing slips and/or receiving reports) for the purchase and forward property information to the Property Delegate for entry into official agency inventory system and to clear the suspense copy of the purchase card order.

(iii) Cardholders should document their file with property information supporting the purchase (e.g. Invoice number, model or serial number of property, dates information was given to property delegate/custodian and any other property identifying information for recording into AITS).

(iv) More information relating to Property Custodian/Delegates roles are located on the FAA Intranet (FAA only) under the title FAA Personal Property Process and Procedure Guide, V2, June 1, 2009.

p. *Prohibited Purchases.*

- (1) Long-term rental or lease of land or buildings. Exception: The purchase card may be used to purchase short-term commercial conference and meeting-room space. (See AMS Procurement Guidance 3.2.2.5A:3 for additional information)
- (2) Cash advances, including money orders;
- (3) Telephone services provided through GSA or the local Office of Information Services or Service Center Communications Office. However, telephone equipment may be purchased using the card;
- (4) Real property, which is defined as land, buildings, structures or rights over or under the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself;
- (5) Long term storage unit rental or services (long term is defined as 6 months or more), unless the purchase card is being used solely as a payment vehicle against a contract or lease signed by the CO/RECO and;
 - (a) The total cost of the rental or purchase of the storage services does not exceed the cardholder's delegated authority;
 - (b) The portable units are not classified as real property (defined above); and;
 - (c) The terms and conditions of the rental or storage services (e.g., termination authority) are in writing and signed by both parties.
- (6) Use of the purchase card for personal purchases or as identification when writing personal checks is prohibited.
- (7) Use of the purchase card for travel charge card or travel-related expenses is prohibited. Exception: Metro fare cards and toll passes (e.g. EZ Pass) may be purchased for local travel supporting official FAA business. Proper controls must be established to ensure that fare cards or passes are not lost or stolen, and use is recorded and monitored to prevent the cards from being used for commuting to and from work. For other services related to local travel, each must be approved by the Purchase Card Office.
- (8) Use of the purchase card to obtain commercial, Government owned or leased vehicles is prohibited.
- (9) Fuel and maintenance of government owned or leased vehicles is prohibited.

(10) Store gift cards or gift certificates must not be purchased with the Government Purchase card.

(11) Coins, including but not limited to Challenge and Commemorative coins.

(12) Certain Telecommunications and Video Surveillance Services or Equipment are prohibited, as provided in T3.6.4 A 16.

q. *Restricted Purchases.* Restrictions for all simplified purchases can be found in AMS Procurement Guidance T3.2.2.5A:4.

r. *Purchase Card Use for Non-Monetary Awards.* Refer to AMS Procurement Guidance T3.2.2.5A:2 for additional information.

s. *Third Party On-line Payments.* Cardholders are required to immediately provide the Approving Official written notification (i.e. e-mail or memorandum) when they become aware that a purchase card purchase will be processed by a third party on-line payment company. Also cardholders must provide the approving official a copy of all documentation that supports the on- line payment transaction within five days of item receipt.

t. *Acquisition of Training Services.* The FAA purchase card is encouraged for use to the maximum extent possible to acquire training. If not designated a training coordinator, it is important for the cardholder to ensure that proper coordination of training requirements has taken place prior to training being purchased, e.g. completed training checklist, needs assessment, etc.

u. *Tax Exemption.* At the time of the purchase, cardholders should advise the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local tax. If the vendor wants to clarify this, the back of the card includes an 888 number that may be called for verification. Exceptions do exist for certain state taxes in certain states (i.e., New Mexico or Arizona). For this reason, cardholders should contact legal counsel regarding applicability of any exemptions or other issues related to state or local taxes.

(1) A review should be made of the bank statement for inclusion of sales tax.

(a) If sales tax was included, first check for the state exception. Tax exempt information and guidelines for each state can be found at <https://smartpay.gsa.gov/content/state-tax-information>.

(b) If sales tax is charged in error, request a credit from the vendor.

(2) All newly issued purchase cards should be checked to ensure that the Operating Administration's name and the tax ID are embossed on the card.

(3) The government is tax exempt, but there are instances where the vendor may charge tax. Tax cannot be disputed in US Bank. If improper tax is charged to a transaction the cardholder must:

- (a) Immediately contact vendor and inform the vendor that the government is tax exempt and request a credit;
- (b) Document files with the proposed agreement to credit the tax, or if vendor states he or she will not credit tax document the file with a memo to file (for phone conversations) or any e-mail/correspondence received; and
- (c) If a credit is forthcoming, watch for the credit during the reconciliation process and contact the vendor if you don't see the credit within 15 days.

v. Deficiencies/Disputes/Damaged Equipment

(1) If the cardholder finds a discrepancy that is the result of item shortage, receipt of a defective or damaged item, or receipt of the wrong item, the first step is to contact the vendor to seek resolution. The cardholder should request a replacement item or a credit from the vendor. If the vendor agrees to credit a cardholder's account, the credit will appear on the cardholder's electronic account statement the following month. On the statement, the cardholder will need to final approve both actions, also. If the item is rejected by the Government, the cardholder should return the defective, damaged or erroneous item to the vendor within 60 days of receipt.

- (a) If a refund is issued in the form of store credit, it must be made out to the Federal Aviation Administration and used for a future valid purchase.
- (b) In the event a refund check is received, it must be forwarded to the servicing accounting office for deposit within one business day. The original accounting classification code should be provided to credit the funds accurately.

(2) A dispute occurs when a cardholder formally challenges the validity of a transaction with the bank. If the cardholder and vendor cannot reach an agreement on resolution of the discrepancy, then the cardholder must formally dispute the purchase on line with the bank. The bank will credit the purchase cardholder's account until the dispute is resolved.

- (a) Reasons for Disputing a Purchase:
 - (i) Inadequate description or unrecognized charge
 - (ii) Duplicate charge
 - (iii) Account charged for merchandise returned

(iv) Account charged for an order that was cancelled (unless cancellations charges were agreed to up-front)

(v) Account charged for merchandise or service that was not received

(vi) Account charged for merchandise that does not reflect that ordered

(vii) Account charged for merchandise that is damaged

(viii) Account charged erroneously

(ix) Incorrect amount charged

(x) Did not authorize the charge posted

(b) The bank will not process disputes for:

(i) Foreign exchange rates for international purchases

(ii) Shipping and handling charges

(iii) Taxes

(iv) Convenience checks and associated fees

w. Lost or Stolen Purchase Cards and Convenience Checks, and/or Compromised Accounts.

(1) *Reporting Lost or Stolen Purchase Cards and convenience checks, and/or Compromised Accounts.* The cardholder must report immediately the loss or theft of their purchase card and/or convenience checks to the APC, the approving official and the card-issuing bank in order to avoid liability for unauthorized purchases on the card. The cardholder must also report immediately to those indicated above a compromised account (i.e. identity theft) or suspicion of a compromised account. The necessary information to report to the card-issuing bank includes the cardholder's complete name, card number, check numbers, and purchases made on the date of loss or theft. In the event of theft, the cardholder should also provide the bank the date that the theft was reported to the police.

(2) *Card Re-issuance.* The card-issuing bank will issue a new card to the cardholder within two working days from the time that the loss or theft is reported. A cardholder who reports more than one incident of loss or theft within a 12-month period will require authorization from the National Purchase Card Manager in order to have another card re-issued.

x. *Accounting Classification Code Adjustments.* Each cardholder has a primary use or "default" accounting classification code based on the primary use of the card, i.e., whatever the office is primarily purchasing. For example, Flight Standards offices may have a primary use of the card for aircraft rental. The card may be used for purchases other than the "primary use" purpose; however,

the action will require a different accounting classification code assignment. The cardholder is required to assign the correct object class code for each item purchased. The approving official is required to review the statement for accuracy, for potential for split purchases, and to approve each individual transaction.

y. Destroying Purchase Cards and Convenience Checks.

(1) When an account has been closed, all related purchase cards and unused checks should be recorded and properly destroyed.

(2) Once the financial institution has been notified to cancel an account, checks attempting to post after the closure date will be declined. The financial institution security associates and bank representatives will investigate each check to determine if floating checks were written by the account holder and valid for payment. If the check is valid, the checks will post to the new account number, if not, the checks will be returned for non-payment and further investigated by the financial institution.

z. Non-Compliance. The purchase card is considered Government property. The FAA will comply with the FAPM Letter 2635 Code of Conduct & Discipline Order, HRP 4.1 on Standards of Conduct, and HROI Table of Penalties for any purchase cardholder, approving official, supervisor, and manager misuse and/or fraud of Government property.

aa. Suspension. The purchase card privileges of any cardholder found to be non-compliant with purchase card guidance twice in a six-month period will be suspended for six months. The cardholder's privileges may be restored upon completion of remedial training or permanently revoked. Notifications regarding non-compliance will be sent to the manager one level above the AO.

bb. Organizational Standard Operating Procedures. Organizations may establish internal standard operating procedures (SOP) for their cardholders addressing the processing of purchase card transactions (e.g. the Purchasing Goods and Services in the FAA SOPs). However, SOPs must not diminish or change the intent of AMS Policy or Guidance.

2 Convenience Checks Revised 4/2016

a. Convenience checks are carbon checks pre-printed with the cardholder's name, work address and a notation that the check is not valid for more than \$2500. As convenience checks are an extension of the applicable purchase card account, all purchase card policy and guidance applies to check usage.

b. *Convenience Check Usage.* A convenience check may be issued only when the service or goods for which payment is being made is operationally critical, cost effective and consistent with FAA procurement policies. In addition, convenience checks are to be issued only in "exceptional situations" when the use of payment mechanisms such as an automated clearinghouse, or a Government purchase card are not accepted.

(1) Convenience checks may only be used:

- (a) Where the political, financial, or communications infrastructure does not support payment by Electronic Funds Transfer (EFT) in a foreign country;
- (b) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area;
- (c) Where paying by EFT would jeopardize military or law enforcement operations or national security interests;
- (d) Where a cost-benefit analysis shows that making non-recurring payments by EFT are not justified;
- (e) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT; or
- (f) When there is only one source for goods or services and the Government would be seriously injured unless payment is made by a method other than EFT.

(2) Convenience checks may not be used for:

- (a) The issuance of travel advances when the Government-issued travel charge card is revoked or cancelled due to delinquent payment or for personal reasons;
- (b) Cash; or
- (c) Travel or travel-related expenses.

c. Authorization Level

- (1) Purchases using convenience checks must be approved in advance by the second-level manager. The convenience check-approving official must initial the check register to verify that the payee does not accept the purchase card.
- (2) If the approving official is not located at the same site as the person authorized to issue the check (check writer), verbal approval, followed by written documentation, is satisfactory. A copy of the written documentation authorizing the purchase must be provided to the check writer. If the second-level manager is not readily available, another individual at that level or higher may approve the use of the check, provided that he/she can attest that the need clearly follows the guidelines stated above.
- (3) If the check writer is providing the check to another employee who will actually be submitting the check to the vendor/merchant/individual for payment, and the latter employee is in a different line of business than the check writer, then the approving official will be the

second-level supervisor of the employee paying the vendor/merchant/individual rather than the second level supervisor of the check writer.

d. *Issuing a Convenience Check.*

(1) The following information must be entered in the appropriate space on the check and must be written, printed in ink or typed:

(a) *Date*: Enter the date on which the convenience check was issued to vendor for purchase. The date can be spelled out (e.g., August 27, 2008) or written (8/27/08). Do not predate or postdate a convenience check.

(b) *Pay to the Order of*: Enter the name of the payee. (Individuals may not issue convenience checks payable to themselves.)

(c) *Amount*. The dollar amount of the convenience check must be written and spelled out in the space provided, (e.g., "\$126.39" and spelled out as "one hundred and twenty-six and 39/100," followed by a horizontal line out to the end of the space provided).

(d) *Memo*. (Additional Information). Enter information pertinent to the purchase, e.g., radar parts, pavement repair, emergency plumbing.

(e) *Authorized Signature*. Sign in the space provided. Your signature should be in the same format as the name printed on the convenience check, (e.g., if first, middle, and last names are spelled out in full rather than initials being used, your signed name must also be spelled out in full).

(2) Except as otherwise authorized, checks must **only** be used for officially approved purchases and issued **only** by the individual whose name appears on the check. Documentation of the "exceptional situation" required to issue a check must be maintained with the purchase card check file.

e. *Spending Limitation.*

(1) Convenience checks access the same single purchase and monthly purchase limits established for the purchase card account. The established monthly limit will cover purchases made by both the purchase card and the convenience checks. Approving officials will determine the appropriate dollar amount of single purchases limits to be established for each cardholder; however, each convenience check issued cannot exceed \$2,500.

(2) Under no circumstances must a check be written over \$2,500.

f. *Knowing Your Balance*. Cleared convenience checks are deducted from the monthly purchase limit when they actually clear the bank, not when they are written. Monthly purchase limits are renewed on the 20th of each month. You are responsible for tracking your individual available balance and

reconciling cleared convenience checks. Remember any transactions made with your purchase card will also be counted toward your monthly balance. The following is important.

- (1) Allow time for each convenience check to clear, which may overlap billing cycles;
- (2) Ensure the monthly purchase limit is sufficient to cover written checks; and
- (3) At the beginning of each billing cycle, convenience checks that appear on the statement as cleared should be deducted from your balance.

IMPORTANT NOTE: This account is different from your personal checking account because unused balances do not accumulate. Exceeding your purchase limit will result in convenience checks being returned for insufficient funds.

g. *Safeguarding and Accountability of Blank Convenience Checks.* Convenience checks must be safeguarded. When not in use, checks are to be kept in a secured area, i.e., locked safe or cabinet or another secured environment approved by the servicing security element to protect them from being stolen or misused.

h. *Insufficient Check Fees.* The financial institution does not charge a fee for insufficient checks; however, the vendor may charge a fee. This fee may vary depending upon the vendor and/or amount of the check.

i. *Maintaining Your Convenience Check Register.* A convenience check register should be maintained to record each convenience check transaction. The convenience check number, date issued, the payee, a description of the purchase, the emergency convenience check amount, and the account fee can be entered.

j. *Maintaining Receipts and Record Retention.* The carbon copy of the check, the merchandise receipt and invoice must be maintained for each purchase and matched against the convenience check register. Records should be retained in the office and then archived according to the agency's Vital Record and Retention Manual. Records include the monthly statement of account, convenience check register, receipts, and all other supporting documentation.

k. *Account Fees.* The fees associated with writing a convenience check will be charged back to the individual check writer's LOB and will appear on the monthly statement.

l. *Billing Statement.* The monthly purchase card and convenience check statement will show the merchant/vendor name, the amount of the check, and the check number of all cleared checks.

m. *Reconciling Your Account.* The monthly statement must be cross-checked with the convenience check register, carbon copy of the check, receipt, invoice, and internal log to ensure that the register and statement amounts are the same. Any discrepancies must be resolved immediately with the financial institution. Keep in mind that cleared checks that may appear on the statement may be checks written the prior month.

B Clauses Added 1/2009

[view contract clauses](#)

C Forms Added 1/2009

[view procurement forms](#)

Sections Revised:

- 3.6.2 A 1 – General
- 3.6.2 A 6 – Procedures for Construction Contracts
- 3.6.2 A 9 – Service Contracts/Service Contract Labor Standards
- 3.6.2 A 10 – Procedures for Service Contracts
- 3.6.2 A 11 – Professional Employee Compensation
- 3.6.2 A 12 – Dismantling, Demolition, or Removal of Improvements

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.6.2 - Labor Laws Revised 4/2009

A Labor-Related Laws

- 1 General Revised ~~7/2017~~ 10/2020
- 2 Labor Disputes Causing Strikes or Delays Revised 7/2007
- 3 Overtime Added 7/2007
- 4 Contract Work Hours and Safety Standards Act Revised 1/2012
- 5 Construction Contracts/Davis-Bacon Act Revised 7/2019
- 6 Procedures for Construction Contracts Revised ~~4/2020~~ 10/2020
- 7 Walsh-Healey Public Contracts Act Revised 10/2014
- 8 Fair Labor Standards Act
- 9 Service Contracts/Service Contract ~~Act~~ Labor Standards Revised ~~7/2019~~ 10/2020
- 10 Procedures for Service Contracts Revised ~~4/2017~~ 10/2020
- 11 Professional Employee Compensation Revised ~~7/2007~~ 10/2020
- 12 Dismantling, Demolition, or Removal of Improvements Revised 10/2020
- 13 Convict Labor
- 14 Equal Employment Opportunity Revised 7/2007
- 15 Equal Opportunity for Veterans Revised 1/2011
- 16 Employment of the Disabled Revised 7/2007
- 17 Forced or Indentured Child Labor Added 7/2007
- 18 Trafficking in Persons Revised 7/2018
- 19 Reserved Revised 1/2020
- 20 Project Labor Agreements Revised 7/2012

B Clauses

C Forms

D Attachment

T3.6.2 - Labor Laws Revised 4/2009

A Labor-Related Laws

1 General Revised 7/2017

a. While the FAA is not subject to the procurement-specific labor laws, we adhere to their spirit and intent within the parameters and flexibility of the AMS. Pertinent procurement-related labor laws are implemented in detailed regulations issued by Department of Labor (DOL) at Titles 29 and 41 of the Code of Federal Regulations (CFR) summarized as follows. Additional information is available on the DOL website.

- (1) Davis-Bacon Act (29 CFR Parts 1, 5, 6, and 7)
- (2) Copeland Anti-Kickback Act (29 CFR Parts 3, 5, 6, and 7)
- (3) Contract Work Hours and Safety Standards Act (29 CFR Parts 5, 6, and 7)
- (4) Walsh-Healey Public Contracts Act (41 CFR Chapter 50)
- (5) Fair Labor Standards Act (29 CFR Chapter V, Parts 500-794)
- (6) Service Contract ~~Act~~Labor Standards (29 CFR Parts 4, 6, 8, 541, and 1925)
- (7) Equal Employment Opportunity Act (41 CFR Chapter 60)
- (8) Special Disabled and Vietnam Era Veterans (41 CFR Chapter 60)
- (9) Employment of the Disabled (41 CFR Chapter 60)
- (10) Occupational Safety and Health Act (29 CFR Parts 6 and 1925; 41 CFR Chapter 50)

b. DOL also issues "All Agency Memoranda" that interpret and explain various labor-related laws and regulations.

c. The Secretary of Labor, or designee if applicable, may make variations, tolerances, and exemptions from many regulatory requirements if such action is necessary and proper in the public interest or to prevent injustice and undue hardship. When applicable, DOL implementing regulations prescribe procedures for requesting variations, tolerances, and exemptions (exemption procedures are summarized in sections that follow).

d. The procurement team (Contracting Officer (CO), program official, legal counsel, and other supporting staff) ensures full and impartial administration of labor standards in contracts, and

ensures contractors and subcontractors are informed of their obligations under labor standards. Procurement teams should:

- (1) Maintain sound relations with industry and labor, and show no preference for either union or non-union contractors.
- (2) Remain impartial concerning any dispute between labor and contractor management and should not attempt conciliation, mediation, or arbitration of a labor dispute. Procurement teams should notify the agency responsible for conciliation, mediation, arbitration, e.g. the National Labor Relations Board, of a potential or actual labor dispute affecting, or threatening to affect, FAA programs.
- (3) When appropriate, require contractors to notify the FAA of potential or actual labor disputes that could, or will, delay contract performance.

e. The CO should promptly refer, in writing, the following to the Department of Labor (DOL):

- (1) Complaints alleging violations of labor-related laws;
- (2) Apparent violations which have a significant impact;
- (3) Any recurring violations; and
- (4) Any failures to promptly correct identified violations.

f. The CO should seek advice from DOL when there is a question of whether a contractor's actions violate a labor-related law. Additionally, the CO should not directly discuss with the contractor any of its employee's complaints about possible labor law violations.

2 Labor Disputes Causing Strikes or Delays Revised 7/2007

(a) Labor disputes may cause strikes or delays which delay contract performance. Contractors are responsible for any reasonably avoidable delays in performance. However, a delay caused by a strike may be excusable if the strike was unforeseeable at time of award and the contractor or its subcontractors acted in good faith, diligently, and in a lawful manner to end the strike, such as seeking injunctive relief in court or engaging in private mediation or arbitration.

(b) Procurement teams should determine whether it is in the FAA's interest to remove products or materials from facilities in which the contractor is unable to deliver because of the strike. Two main factors to be considered are the criticality of need and the possibility/practicality of performance by another vendor. The CO, after consulting with legal counsel, must first notify the contractor in writing to request removal of the products or materials from the facility.

(1) If the contractor agrees, and FAA personnel will remove the items, FAA personnel should take extreme care to avoid use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(2) If the contractor disagrees, and the items are still critical, the CO should seek advice from legal counsel on the next action to be taken.

3 Overtime Added 7/2007

For cost-type (excluding incentive fee), time and materials, and labor hour contracts, the CO should determine the extent an offer is based on the payment of overtime and shift premiums, and negotiate contracts without the use of overtime or premiums. Overtime may be occasionally necessary to meet urgent or unforeseen program needs. In those instances, the CO should require the contractor to submit requests for overtime in advance of incurring the cost for overtime. The CO should review and approve contractor requests for overtime. Approval of overtime should be prospective; however, if justified by emergency circumstances, approval may be retroactive.

4 Contract Work Hours and Safety Standards Act Revised 1/2012

a. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applies to all contracts over \$150,000 that may require or involve laborers or mechanics (the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include seaman). The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers or mechanics cannot be required, or permitted, to work more than 40 hours in any workweek unless paid overtime at not less than 1 1/2 times the basic rate of pay.

b. Liquidated Damages and Overtime Pay.

(1) When overtime computations disclose under-payments, the contractor and any subcontractor is liable to the affected employee for the employee's unpaid wages and is also liable to the FAA for liquidated damages. The CO will compute liquidated damages for each affected employee in the sum of \$10 for each calendar day that the employee was required, or permitted, to work in excess of the standard workweek of 40 hours without payment of overtime.

(2) If the contractor or any subcontractor fails or refuses to comply with overtime pay requirements and if the funds withheld by the FAA for labor standards violations are not sufficient to pay both the unpaid wages and the liquidated damages, the withheld funds will be used first to pay unpaid wages (or an equitable portion when the funds are not adequate for this purpose); and the balance, if any, used to pay liquidated damages.

(3) If the liquidated damages computation was incorrect or if the contractor or subcontractor inadvertently violated the provisions of the CHWSSA, the CO may:

(a) Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of \$500 or less; or

(b) Make a recommendation to DOL for an adjustment in, or release from, the liability when the liquidated damages are over \$500.

(4) If the contractor is entitled to funds withheld or collected for liquidated damages, the CO should instruct the cognizant accounting office to pay the contractor the amount due. If the FAA is entitled to retain the funds, the CO should obtain instructions from the cognizant accounting office.

c. *Administration and Enforcement.* The same procedures and reports required for construction contract labor standards also apply to investigations of alleged violations of the CHWSSA when the contract is for other than a construction.

d. The CHWSSA does not apply to contracts:

(1) Valued at or below \$150,000

(2) For commercial items;

(3) For the transportation or transmission of intelligence;

(4) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf Islands as defined by the Outer Shelf Lands Act;

(5) For work to be solely done in accordance with the Walsh-Healey Public Contracts Act;

(6) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(7) Exempt under regulations of the Secretary of Labor.

5 Construction Contracts/Davis-Bacon Act Revised 7/2019

a. *Davis-Bacon Act.* The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of \$2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL. For purposes of FAA procurement, the Davis Bacon Act will only apply to contracts greater than \$10,000.

b. Related Laws.

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the Copeland Act will include a clause requiring contractors and subcontractors to comply with regulations issued by DOL. Additionally, the Copeland Act requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. Applicability.

(1) The Davis-Bacon Act and related laws apply to:

(a) Construction work to be performed by laborers and mechanics on a public building or public work site;

(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;

(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;

(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and

(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:

(a) The manufacturing or fabrication of components or materials off the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed

separately, or that is itself the subject of research, experiment, or development;

(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(d) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

d. Non-construction Contracts Involving Some Construction.

(1) The Davis-Bacon Act and related laws apply to construction work to be performed as part of contracts other than construction (supply, service, research and development, etc.) if:

(a) The construction work is to be performed on a public building or public work;

(b) The contract contains a substantial amount of construction work exceeding \$10,000 in value (the word "substantial" relates to the construction work considered on its own rather than merely a value comparison of the construction work as compared to the total value of the contract); and

(c) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The Davis-Bacon Act and related laws do not apply if:

(a) The construction work is incidental to the furnishing of supplies, equipment, or services; and

(b) The construction work is so merged with non-construction work, or so fragmented in terms of the locations or time spans within which it is to be performed, that it cannot be segregated as a separate contractual requirement.

(3) Consistent with Executive Order 13706 “Establishing Paid Sick Leave for Federal Contractors”, contracts subject to the Davis-Bacon Act must include AMS Clause 3.6.2-46 “Paid Sick Leave”.

e. Definitions.

(1) "Building" or "work," generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging shoring rehabilitation and activation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" unless conducted in connection with and at the site of such building or work as described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(2) "Construction, alteration, or repair," means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment of the site of the building or work by persons employed by the contractor or subcontractor.

(3) "Laborers or mechanics" includes:

(a) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, as distinguished from mental or managerial;

(b) Apprentices, trainees, helpers, and in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards;

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals. The terms exclude workers whose duties are primarily executive, supervisory, (except as provided in this section) administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

(4) "Public building" or "public work," means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(5) "Site of the work," is defined as follows:

(a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in subparagraph (5)(b) below, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."

(b) Except as provided in subparagraph (5)(c) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work"; provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) The "site of work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations, and continuance in operation, are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial vendor or material handler which are established by a vendor of materials for the project before proposal are received and are not on the project site, are not included in the "site of work." Such permanent, previously-established facilities are not a part of the "site of the work," even if their operations may for a period of time, be dedicated exclusively, or nearly so, to the performance of a contract.

(6) "Wages," means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide

fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness-resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(7) "Apprentice," means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(8) "Trainee," means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

6 Procedures for Construction Contracts Revised 4/2020

a. Davis-Bacon Act Wage Determinations.

(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

(a) *General Wage Determination.* General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by DOL. Once incorporated in a contract, a wage determination normally remains effective for the life of the contract.

Modifications which may be issued do not apply to ongoing contracts unless specifically directed by DOL. General wage determinations are available online on the Department of Labor (DOL) website. This website provides a single location for COs to use in obtaining current or archived Davis-Bacon Act wage determinations.

(2) *Project Wage Determination.* When a general wage determination does not exist for a particular area, DOL will issue a project wage determination if requested by the CO using a Standard Form (SF) 308. A project wage determination is effective for 180 days and applies to specific contracts within that time period. Once incorporated into the contract, a project wage determination remains effective for the life of the contract unless directed otherwise by DOL.

b. *General Requirements.*

(1) The CO should ensure that only the appropriate wage determinations are incorporated in screening information requests (SIR's) and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO should indicate the work to which each wage determination or part thereof applies.

(2) If the wage determination contains more than one rate schedule, the CO should either include only the rate schedules that apply to the specific types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule should be applied.

(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(c) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate

schedules issued (e.g., "dredging," "water and sewer line," "dams," "flood control," etc.).

(e) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally-established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

c. Requesting Wage Determinations.

(1) *General Wage Determination.* The CO may incorporate general wage determinations without notifying DOL.

(2) *Project Wage Determination.* To request a project wage determination, the CO will utilize the Department of Labor's (DOL) wage determination website. If a wage determination does not exist for a given area, the CO may request a project wage determination by submitting a Standard Form (SF) 308 to DOL.

d. The published wage determinations, with their most current modification received by the CO, will be incorporated into applicable SIR's. Incorporation by reference is not permitted.

e. *SIR's Issued without Wage Determinations.* The CO should include a notice in the SIR that wage determinations have been requested and that the SIR will be amended to incorporate any wage determination when received.

f. *Modifications of Wage Determinations.* If the CO has a wage determination for a particular acquisition, wage determination modifications received by the CO or published in the Federal Register less than 10 days prior to receipt of offers are not required to be incorporated if the CO determines there is not reasonable time to incorporate the modification and the CO documents the file with said determination. Note also that if the contract has not been awarded within 90 days after bid opening/receipt of offers, any wage determination modification published on ~~WDOL~~beta.SAM.gov prior to award of the contract shall be effective with regard to that contract unless the FAA Administrator or his or her designee requests and obtains an extension of the 90-day period from the DOL Administrator. Modifications received after award are not effective and need not be incorporated in the contract.

g. *Award of Contract Without Required Wage Determination.* If DOL discovers after award that the wrong wage determination or rate schedule was specified, the CO will modify the contract to incorporate the corrected wage determination (retroactive to the date of award), or terminate the contract. If appropriate, the CO should equitably adjust the contract price.

h. *Posting Wage Determinations and Notice.* The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place. The CO should furnish to the contractor DOL Form WH-1321, "Notice to Employees Working on Federal and Federally Financed Construction Projects," to be posted with the wage

rates. The poster should include the name, address, and telephone number of the FAA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

i. *Wage Determination Appeals.* The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. The FAA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by DOL has been sought pursuant to 29 CFR 1.8 and denied.

j. *Satisfying Wage, Fringe Benefit, and Overtime Requirements.*

(1) Contractors are required to pay laborers and mechanics at least the combined hourly wage and fringe benefit amount specified in the wage determinations. In computing wages paid to laborers or mechanics, the contractor may include only the amounts paid in cash and contributions to bona fide benefit plans.

(2) Laborer and mechanic's overtime pay is based on 1 1/2 times the basic hourly rate of pay. When computing the basic hourly rate of pay, the contractor must use the hourly rate in the wage determination or the employee's actual rate, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications.*

(1) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

(a) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(b) The classification is utilized in the area by the construction industry.

(c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour

Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(3) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CO do not agree on the proposed additional classification, or if the criteria are not met, the CO will submit a report (including a copy of SF 1444) giving the views of all interested parties and the CO's recommendation to DOL, Wage and Hour Division, for determination of appropriate classification and wage rate.

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause "Davis Bacon Act," and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

l. *Apprentices and Trainees.* The CO or Contracting Officer's Representative (COR) will review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, "Statement and Acknowledgment, upon award of each subcontract. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

n. *Payrolls and Statements.*

(1) *Submission.* In accordance with the clause "Payrolls and Basic Records," the contractor must submit, within 7 calendar days after the regular payroll week covered, for the contractor and each subcontractor: (a) copies of weekly payrolls applicable to the contract, and (b) weekly payroll statements of compliance. The contractor may use DOL Form WH-347, "Payroll (For Contractor's Optional Use)," or a similar form and identical representation.

(2) *Withholding for Non-submission.* If the contractors fail to submit copies of its, or its subcontractor's payrolls promptly, the CO will withhold from any payment due to the contractor, approval of an amount that the CO considered necessary to protect the FAA's interests and the employees.

(3) *Examination.* The CO, or COR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

- (a) The correctness of classifications and rates;
- (b) Fringe benefits payments;
- (c) Hours worked;
- (d) Deductions; and
- (e) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

(4) Fringe benefits payments, contributions made or costs incurred on other than a weekly basis will be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved.

(5) *Preservation.* The FAA will retain payrolls and statements of compliance for 3 years after completion of the contract and make them available for DOL if requested. Payrolls will not be returned to the contractor.

(6) *Disclosure Of Payroll Records.* Contractor payroll records in FAA's possession must be carefully protected from any public disclosure which is not required by law since payroll records may contain information in which the contractor's employees have a privacy interest as well as information in which the contractor may have a proprietary interest that the FAA may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

o. *Site Compliance Checking.*

(1) The CO or COR will investigate as necessary to ensure compliance with the labor standards requirements of the contract.

(2) *Regular Compliance Checks.* Compliance checks should include the following:

- (a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).
- (b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. *Investigations.* The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report.

Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if:

(a) underpayments exceeded \$1,000;

(b) violations were willful or aggravated;

(c) no restitution was made; or

(d) future compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments.*

(1) *Suspension of Contract Payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, last four digits of the social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of

their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement.*

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

- (a) Misclassification of workers;
- (b) Hours of work;
- (c) Wage rates and payment;
- (d) Payment of overtime;
- (e) Withholding practices; and
- (f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

- (a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.
- (b) The contractor may appeal the CO's findings or part thereof by furnishing the CO a complete statement of the reasons for the disagreement with the findings.

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. Contract Termination.

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

- (1) The number of the terminated contract;
- (2) The name and address of the terminated contractor or subcontractor;
- (3) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports.* A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.

7 Walsh-Healey Public Contracts Act Revised 10/2014

a. The Walsh-Healey Public Contracts Act (41 U.S.C §§ 6501-6511) requires all contracts, that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed \$15,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

- (1) Items under express statutory authority to purchase "in the open market," such as commercial items;

- (2) Items under emergency, single source circumstances;
- (3) Perishable or agricultural products;
- (4) Public utilities;
- (5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;
- (6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;
- (7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;
- (8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)
- (9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).
- (10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).
- (11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and
- (12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

- (1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.
- (2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 20210. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 20210.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$15,000 or less is subsequently modified to exceed \$15,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.
- (2) If a contract for more than \$15,000 is subsequently modified by mutual agreement to \$15,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of \$15,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.
- (4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA- owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.
- (5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed \$15,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. *Eligibility as a Manufacturer or Regular Dealer.*

- (1) *Manufacturer.* An offeror qualifies as a manufacturer if it shows before award that it is:
 - (a) *Established.* An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.
 - (b) *Newly entering.* An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:
 - (i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) *Regular Dealer.*

(a) *Qualifications.* An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales.* Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications.* For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. *Determination Of Eligibility.*

(1) The responsibility for applying the eligibility requirements begins with the CO.

(2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:

(a) The CO doubts the validity of the attestation;

(b) A protest has been lodged;

(c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or

(d) The procurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the procurement team should, while on site, confirm the offeror's eligibility under Walsh-Healey.

(3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:

(a) Pre-award surveys;

(b) Experience of other acquisition offices;

(c) Information available from the cognizant contract administration office;

(d) Information provided directly by the offeror; and

(e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on-site survey conducted specifically for that purpose.

(4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:

(a) The offeror will be notified in writing that:

(i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.

(ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct pre-award investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. Pre-Award Protests Against Eligibility.

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. Award Pending Final Determination.

(1) Award may be made immediately if the CO certifies in writing that: (a)

The products to be acquired are an emergency requirement; or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. Award. The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. Postaward.

(1) *Protests.*

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror.* If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation.* If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division.* Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

1. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

8 Fair Labor Standards Act

No contractor or subcontractor holding a service contract for any dollar amount will pay any of its employees working on the contract less than the nationally established minimum hourly wage (as specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206))

9 Service Contracts/Service Contract ~~Aet~~Labor Standards Revised 7/2019

a. *General.* The Service Contract ~~Aet of 1965~~Labor Standards (41 U.S.C. §§ 6701-6707), selected provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201), and related Department of Labor regulations (29 CFR parts 4, 6, 8, 541, and 1925) apply to service contracts.

b. *Service Contract* ~~Aet~~Labor Standards. The Service Contract ~~Aet~~Labor Standards (SCASCLS) applies to contracts if the principal purpose is to furnish services in the U.S. through the use of service employees, unless exempted. Service contracts greater than \$10,000 must contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowed compensation, and a statement of equivalent

Federal employee classifications and wage rates. Additionally, the SCASCLS limits the term of service contracts to 5 years (41 U.S.C. § 6707(d)).

Consistent with Executive Order 13706 “Establishing Paid Sick Leave for Federal Contractors”, contracts subject to the Service Contract Act Labor Standards must include AMS clause 3.6.2-46 “Paid Sick Leave”.

c. *Exemptions from SCASCLS.* The SCASCLS does not apply to:

(1) Contracts performed outside of the U.S.; (2)

Contracts \$10,000 or less;

(3) Construction, alteration, or repair of public buildings or public works, including painting and decorating;

(4) Dismantling, demolition or removal of improvements when part of a construction contract;

(5) Work performed by a regular dealer or manufacturer (in accordance with the Walsh-Healey Public Contracts Act). Service contracts for remanufacturing of equipment may be subject to Walsh-Healey Public Contracts Act, rather than the SCASCLS, if the work is so extensive as to be equivalent to manufacturing. Remanufacturing is considered to be major overhaul or modification of equipment, material, or an item which involves:

(a) complete or substantial teardown to the component level;

(b) substantially all of the parts are reworked and/or replaced, or outmoded parts are replaced;

(c) the equipment is reassembled; and

(d) the work is performed at a facility operated by the contractor. Remanufacturing does not include repair of damaged equipment or routine maintenance unless there is complete teardown, rework, and reassembly;

(6) Transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(7) Contracts for furnishing of services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(8) Public utility services;

(9) Employment contracts with an individual(s) (rather than a firm with multiple employees);

(10) Contracts with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for a substantial portion of the carrier's revenues;

(11) Carriage of freight or personnel if subject to regulated rates in section 10721 of the Interstate Commerce Act;

(12) Contracts principally for maintenance, calibration, or repair of automated data processing equipment, office information/word processing systems, scientific and medical equipment, and office/business equipment (if services are performed by the manufacturer or supplier of the equipment), subject to the following:

(a) the equipment is commercially available;

(b) the price of services is based on established catalog or market prices;

(c) employees used for Government contracts and commercial contracts are under the same overall compensation plan; and

(d) the contractor certifies in the contract to the aforementioned conditions; or

(13) *Employees* who are bona fide executive, administrative or professional employees (as defined and implemented in 29 CFR 541). Some support service contracts involve professional employees who may be exempt from SCASCLS requirements.

Professionals are those employees having recognizable status based on acquiring professional knowledge through prolonged study, such as accountancy, actuarial computation, architecture, dentistry, engineering, law,

medicine, nursing, pharmacy, the sciences (such as biology, chemistry, physics, and teaching). To be a professional employee, a person must be involved essentially in discharging professional duties and exercising judgment.

d. *Examples of Contracts Covered by SCASCLS*

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the SCASCLS (see 29 CFR 4.130 for additional examples):

(1) Motor pool operation, parking, taxicab, and ambulance services;

(2) Packing, crating, and storage;

(3) Custodial, janitorial, housekeeping, and guard services;

- (4) Food service and lodging;
- (5) Snow, trash, and garbage removal;
- (6) Some support services at Government installations, including grounds maintenance and landscaping;
- (9) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services;
- (10) Electronic equipment maintenance and operation and engineering support services;
- (11) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment;
- (12) Operation, maintenance, or logistics support of a Government facility;
- (13) Data collection, processing and analysis services;

a. e. Determining **SCASCLS** Applicability. Prior to issuing a screening information request, the CO should determine **SCASCLS** applicability to the particular acquisition and anticipated categories of contractor employees. If the **SCASCLS** applies to any anticipated categories of employees, the CO will ~~request a wage determination from DOL~~ include the appropriate Wage Determination from the Wage Determination website (www.beta.SAM.gov) in the SIR. If there is no Wage Determination available for the location of the services to be performed, the CO will request a new Wage Determination from DOL using the e98 process.

10 Procedures for Service Contracts Revised 4/2017

a. DOL Wage Determinations. For contracts subject to the **SCASCLS**, DOL will determine the hourly wage and fringe benefits to be paid employees. DOL wage determinations can be based on either that which prevails for a given locality or can be based on collective bargaining agreements (CBA) between employees and contractors. In certain instances, a DOL wage determination will not apply; in those cases, employees must be paid at least the nationally established minimum wage in the Fair Labor Standards Act.

(1) *Wage Determination Based on Collective Bargaining Agreement.* Follow-on (successor) contractors performing substantially the same services in the same locality must pay wage and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide CBA entered into under the incumbent's (predecessor) contract. However, this requirement will not apply if DOL determines, as a result of a hearing,

that the CBA wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

b. *Requesting a Wage Determination.* When the SCASCLS applies to a particular acquisition, the CO will submit a request to, and obtain a response from, DOL regarding the minimum wage and fringe benefits applicable to the acquisition. The CO will obtain an applicable wage determination through DOL's wage determinations online program (www.beta.SAM.gov). If ~~WDOL does not contain~~ there is not an appropriate SCASCLS wage determination for a contract action, the CO must use DOL's e98 electronic process, also available on ~~their~~its website, to request a wage determination. The CO will request a wage determination for:

- (1) Each new screening information request (SIR) and contract over \$10,000;
- (2) Each contract modification which brings the contract value above \$10,000, and
 - (a) Extends the existing contract pursuant to an option clause or otherwise; or
 - (b) Changes the scope of the contract whereby labor requirements are affected significantly.
- (3) Each multiple-year contract over \$10,000 upon:
 - (a) annual anniversary date if the contract is subject to annual appropriations; or
 - (b) biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years (unless otherwise advised by DOL).

c. *Utilizing beta.SAM.gov and the e98 Process.* Instructions in selecting wage determinations from ~~WDOL~~ and using the e98 form are available in the beta.SAM.gov Learning Center~~WDOL.gov User's Guide~~ provided on ~~their~~its website.

d. *Collective Bargaining Agreements.*

(1) Early in the acquisition cycle, the CO should determine whether an existing CBA will affect the planned acquisition. The CO should determine whether there is an existing (predecessor) contract and, if so, whether the incumbent prime contractor, or subcontractors, and any of their employees have a CBA.

(2) Section 4(c) of the SCASCLS provides that a follow-on (successor) contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by an incumbent contractor.

(3) Section 4(c) of the SCASCLS is subject to the following limitations:

(a) It will not apply if the incumbent contractor enters into a CBA for the first time and the CBA does not become effective until after the expiration of the incumbent's contract.

(b) If the incumbent contractor enters into a new or revised CBA during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement will not be effective for the purposes of section 4(c) of the SCASCLS if:

(i) the FAA receives notice of the terms of the CBA after follow-on contract award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the SCASCLS applies, the CO will obtain a copy of any CBA between an incumbent contractor, or subcontractor, and its employees (the clause AMS 3.6.2-28 "Service Contract ~~Aet~~Labor Standards" requires the incumbent prime contractor to furnish the CO a copy of each CBA.) The CO may:

(a) Use the beta.SAM.gov to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a copy of the collective bargaining agreement, into the successor contract action. Unless requested to do so, it is not necessary to submit a copy of the collective bargaining agreement to the Department of labor.

(b) Use the e98 process on ~~wdol.gov~~beta.SAM.gov to request that DOL prepare the wage determination. ~~Once reviewed by DOL, they~~ may request a copy of the collective bargaining agreement from the CO in order to prepare the wage determination.

(5) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the CO will identify the locations to which the agreements apply.

(6) If the CBA does not apply to all service employees under the contract, the CO will utilize ~~WDOL~~beta.SAM.gov to obtain the prevailing wage determination for those classifications not covered by the collective bargaining agreement. The CO will also separately list in the solicitation and contract the service employee classifications: (a) subject to the CBA, and (b) not subject to any CBA.

e. Notification to Interested Parties Under Collective Bargaining Agreements.

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO will give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(a) The forthcoming follow-on contract and the applicable acquisition dates (issuance of SIR, receipt of offers, commencement of communication, award of contract, or start of performance, as applicable); or

(b) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as applicable); or

(c) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as applicable).

(2) The CO will give written notification at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of- receipt limitations to apply. The CO will retain a copy of the notification in the contract file.

f. *Place of Performance Unknown.* The CO should identify all possible places of performance, even though the actual place of performance will not be known until the successful offeror is chosen. The CO should obtain a wage determination for each locality where service may be performed. Should the CO subsequently learn of additional possible places of performance, the CO will obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations.

g. *Wage Determinations Involving and Not Involving a Collective Bargaining Agreement.*

(1) *Wage Determination Not Involving a CBA.*

(a) If the CO has not received a response from DOL within 10 days, the CO should contact the Wage and Hour Division to determine when the wage determination, or revision to a wage determination, can be expected.

(b) When the CO has received a wage determination and DOL subsequently issues a wage determination revision, the revision will not be effective if the CO receives it less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the revision into the screening information request. If DOL issues a revision after contract award or modification award, the revision will not be effective, provided that contractor performance starts within 30 days of the contract award or modification. If the contract does not specify a start of performance date within 30 days of the award or modification, the CO will notify DOL and any revision received by the CO not less than 10 days before commencement of the work will be effective.

(2) Wage Determination Involving a CBA.

(a) A wage determination or revision based on a new or changed CBA will not be effective if notice of the terms of the new or changed CBA is received by the CO less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the new or revised CBA into the SIR. If DOL issues a wage determination revision after follow-on contract award or modification, the revision will not be effective, provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed CBA received by the CO not less than 10 days before commencement of the work will be effective for purposes of the successor contract under section 4 (c) of the [SCASCLS](#).

(3) If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the SIR/contract action should proceed according to the following instructions:

(a) If a successorship/same locality/incumbent CBA situation exists, the CO will incorporate in the SIR/contract the wage and fringe benefit terms of the CBA, or the CBA itself, and include a wage determination referencing that collective bargaining agreement created by use of the [WDOLbeta.SAM.gov](#) website. The CO may incorporate the wage and fringe benefit terms of the CBA in other contract actions, such as exercise of options, in order to facilitate price adjustments for options in fixed price contracts.

(b) The terms of a new or changed CBA, negotiated by the incumbent contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraph f.(2)(a) above.

h. DOL Response to Late Requests for Wage Determination.

If the CO has not requested a wage determination in a timely manner and the CO has not received a response from DOL, the CO should contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the CO should use the latest wage determination or revision, if any, incorporated in the existing contract. If a CBA exists, the CO will incorporate the wage and fringe benefit terms of the CBA, or the CBA itself. If any new or revised wage determination is received, the CO will incorporate it in the SIR or contract within 30 days of receipt. When the wage determination is received after contract award or modification:

(1) The CO will equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision when there is no CBA

involved. DOL may require retroactive application of the wage determination for a contractual action involving more than five service employees; or

(2) The CO will not equitably adjust the contract price if a CBA is involved since the wage determination or revision will be based on the economic terms of the CBA.

i. *Review of Wage Determination.*

The CO should review wage determinations received to ensure the correct response has been provided. Additionally, the CO should consider the following:

(1) *Based on Incumbent CBA.* If wages, fringe benefits, or periodic increases provided for in a CBA vary substantially from those prevailing for similar services in the locality, or that the CO believes the CBA was not the result of arm's length negotiations, the CO should consider bringing the matter to DOL for a hearing.

(2) *Based on other than Incumbent CBA.* Upon receiving a wage determination not predicated upon a CBA, the CO will ascertain:

(i) Whether the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(ii) Whether the wage determination contains significant errors or omissions.

(iii) If either (i) or (ii) is evident, the CO will contact DOL to determine appropriate action.

(3) *Request for Hearing.* The FAA or other interested parties may request a hearing on an issue involving the review of a wage determination. To obtain a hearing, the CO should submit a request to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210, with sufficient data to support that the rates at issue vary substantially from those prevailing for similar services in the same locality or that a CBA was not the result of arm's length negotiations. The request should also include: (1) the number of the wage determinations at issue; (2) name of contracting agency; (3) status of the acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance); (4) names and addressees, if known, of interested parties; and (5) a description of the work.

(4) Unless DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-on option period, as the case may be.

j. *Delay of Acquisition Dates Over 60 Days.*

If any award was delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision of a wage determination received by the

CO as a result of that communication, or upon discovery by DOL of a delay, will supersede the earlier response.

k. Discovery of Errors by the Department of Labor.

If DOL determines, either before or after a contract award, that a CO made an erroneous determination that the SCASCLS did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO within 30 days of notification by DOL will include in the contract the clause "Service Contract AetLabor Standards", and any applicable wage determination issued by DOL. DOL may require retroactive application of that wage determination. The CO should equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

l. Statement of Equivalent Rates for Federal Hires.

The statement required under clause "Statement of Equivalent Rates for Federal Hires" will set forth those wage rates and fringe benefits that would be paid by the FAA to various classes of employees. The rates listed will be hourly wages for GS step 1 employees or WG step 2 for non-supervisory or WG step 3 for supervisory wage, as applicable. Personnel offices can provide assistance in determining the appropriate Federal job categories and hourly wages.

m. Notification to Contractors and Employees.

(1) As soon as possible after contract award, the CO should inform the contractor of the labor standards requirements of the contract relating to the SCASCLS and of the contractor's responsibilities under these requirements; unless it is clear that the contractor is fully informed.

(2) At the time of award, the CO should furnish to the contractor Department of Labor Publication WH-1313, "Notice to Employees Working on Government Contracts," for posting. The CO should also attach any applicable wage determination to Publication WH-1313.

n. Additional Classes of Service Employees.

(1) If the CO is aware that contract performance involves classes of service employees not listed in the wage determination, the CO should require the contractor to prepare and submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" (the form provides instructions for completing). This "conformance" procedure requires the contractor to match, as closely as possible, the unlisted job categories to those which are listed on the wage determination. The CO should review the completed SF 1444 and supporting documentation (which should also include the agreement or disagreement of the employees' representative or the affected employees themselves), add a statement whether the CO concurs with the contractor's job classification, and forward the package to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (a)

approve, modify, or disapprove the request when the parties are in agreement, or (b) render a final determination in the event of disagreement among the parties. The Wage and Hour Division will notify the CO if more than 30 days will be required to act on the SF 1444.

(2) Some wage determinations will list a series of classes within a job classification family, for example, computer operator level I, II, and III. Generally, level I is the lowest, entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) may not be conformed, but may be used if listed on a wage determination. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

o. Seniority Lists.

If a contract is performed at a Federal facility where incumbent contractor employees may be hired/retained by a follow-on contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment for each person. At the commencement of the follow-on contract, the CO should provide a copy of the list to the follow-on contractor for determining employee eligibility for vacation or other fringe benefits (which are based upon length of service, including service with predecessor contractors) if such benefit is required by an applicable wage determination.

p. Withholding of Contract Payments.

Any violations of [SCASCLS](#) renders contractors liable for the amount of any deductions, rebates, refunds, or underpayments, or nonpayment due employees. The CO may withhold, or will withhold or upon written request by DOL at a level no lower than Assistant Regional Administrator, the amount needed to pay underpaid employees. The withheld funds should be placed in a deposit account for later transfer to DOL for disbursement (the CO should consult with the cognizant accounting office).

11 Professional Employee Compensation Revised 7/2007

The Service Contract [Act Labor Standards \(SCASCLS\)](#) was enacted to ensure contractors fairly compensate their blue collar and some white collar workers, but the [SCASCLS](#) does not provide coverage for bona fide executive, administrative, or professional employees. Professional employees should be compensated fairly and properly. When meaningful numbers of professional employees will be provided under a planned service contract, the CO may require offerors to submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits. Unrealistically low professional employee compensation should be evaluated for the potential risk to contract performance.

12 Dismantling, Demolition, or Removal of Improvements

If a contract is solely for dismantling, demolition, or removal of improvements, the Service Contract ~~Act~~Labor Standards applies unless further work which will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

13 Convict Labor

a. The policies and procedures controlling the employment of prison inmates working on Government contracts are based 18 U.S.C. 4082(c)(2), Executive Order 11755, dated December 29, 1973, and Executive Order 12943, dated December 13, 1994. b. In

performing a contract, contractors may employ:

- (1) persons on parole or probation;
- (2) persons who have been pardoned or who have served their terms;
- (3) Federal prisoners; or
- (4) Nonfederal prisoners authorized by the Attorney General to work at paid employment in the community if:
 - (a) The worker is paid or is in an approved work training program on a voluntary basis;
 - (b) Representatives of labor union organizations have been consulted;
 - (c) Paid employment will not (i) displace employed workers; (ii) be applied to skills in which there is a surplus of labor in the locality; (iii) impair existing contracts for services; and
 - (d) Pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed.

14 Equal Employment Opportunity Revised 7/2007

a. *General*

(1) Executive Order 11246, as amended, prohibits contractors and subcontractors from discriminating against any employee or applicant because of race, color, religion, sex, or national origin, and to take affirmative action to ensure these requirements are met regarding any existing employee.

(2) The FAA may not award a contract or modification, or approve a subcontract, with a contractor found ineligible by DOL's Office of Federal Contract Compliance Programs (OFCCP) because of noncompliance with EO 11246.

(3) Neither the FAA, nor its contractors, will solicit or contract in a manner to avoid applicability of the nondiscrimination and affirmative action or equal opportunity requirements.

(4) OFCCP has primary responsibility for administration and enforcement of affirmative action and equal opportunity requirements. Contractor disputes related to EO 11246 compliance are to be handled according to DOL regulations (41 CFR 60-1.1).

b. *Procedures.*

(1) *Other Than Construction.* Revised 07/2007

(a) The CO will obtain a pre-award clearance from the OFCCP area office for contracts, and subcontracts, totaling \$10,000,000 or more, including options, and for modifications increasing the total contract value to \$10,000,000 or more. Pre-award clearances remain valid for a 24-month period from the date of issuance. The CO may make verbal requests if confirmed in writing.

(b) The CO does not need to request a pre-award clearance if

(i) The specific proposed contractor is listed on OFCCP's National Pre-award Registry website

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The CO documents the Registry review in the contract file.

(c) The following information should be included in pre-award clearance request:

(i) Name, address, telephone number and any known corporate affiliation of the apparent prime contractor and any known subcontractors where their subcontract is expected to exceed \$10,000,000;

(ii) Anticipated date of award;

(iii) Whether the prime or first tier subcontractor have held previous federal contracts or applicable subcontracts;

(iv) The places of contemplated performance;

(v) The period of performance; and

(vi) Estimated dollar amount of the contract and each first-tier subcontract.

(d) The CO should allow 30 days for obtaining the pre-award clearance. If waiting for the pre-award clearance would delay award of an urgent and critical contract, the CO may proceed with award, subject to concurrence by the Chief of the Contracting Office (COCO). The CO must also immediately notify the OFCCP area office of the award. If OFCCP subsequently finds the contractor or subcontract is ineligible for the award, OFCCP will provide notice of the applicable course of action. (Revised 10/2002)

(2) *Construction.*

(a) Construction contractors are required to meet (i) the contract terms and conditions which cite affirmative action requirements in specified geographical areas or projects, and (ii) applicable requirements of DOL regulations (42 CFR 60-1 and 604).

(b) Periodically, OFCCP publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry for certain geographic areas. The CO may contact the OFCCP regional office to request current information on affirmative action goals to be included in the clause "Affirmative Action for Construction Contracts."

(c) COs will give written notice to the appropriate OFCCP area office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification is to include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by OFCCP, the CO is to arrange a conference among contractor, the FAA's contracting personnel and EEO contract compliance personnel to discuss the contractor's compliance responsibilities.

c. *Inquiries and Complaints.* The CO should refer the following to the applicable OFCCP area office:

(1) An inquiry from a contractor regarding status of its compliance with Executive Order 11246, or rights of appeal;

(2) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with Executive Order 11246;

(3) Complaints alleging violation of the "Equal Opportunity" clause. The CO will advise the complainant in writing of the referral. The prime contractor or subcontractor that is the subject of a complaint will not be advised in any manner, or for any reason, of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

d. *Enforcement.* OFCCP will provide written direction to the CO regarding any enforcement actions for contractor violations of EO 11246, DOL regulations, or the "Equal Opportunity" and related clauses. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed by OFCCP for violations.

e. *Poster.* The CO will furnish to the prime contractor appropriate quantities of OFCCP's Equal Employment Opportunity posters prior to contract performance.

f. *Exemptions.* The following are totally or partially exempt from EO 11246:

(1) Contracts which agency head determines are necessary for national security;

(2) Contracts specifically exempted by OFCCP;

(3) Individual contracts and subcontracts less than \$10,000 (unless the value of all contracts or subcontracts awarded to that contractor or subcontractor during any 12 month period will exceed \$10,000);

(4) Contracts performed outside of the U.S.;

(5) Contracts with state or local governments;

(6) Work on or near Indian Reservations;

(7) Facilities not connected with contracts;

(8) Indefinite quantity contracts if the amount ordered during any year will, or does, not exceed \$10,000.

g. *OFCCP Concurrence for Certain Exemptions.* The CO must request and obtain concurrence by the Director of OFCCP for the exemptions under subparagraphs f.(1), f.(2), and f.(5) above. The CO will prepare a written request delineating the reasons and authority for the exemption.

15 Equal Opportunity for Veterans Revised 1/2011

a. The Vietnam Era Veterans Readjustment Act of 1972 (38 U.S.C. 4211 and 4212), Executive Order 11701, 41 CFR Part 60-250 and Part 61-250, and the Veterans Employment Act of 1998 (Public Law 105-339) require contractors and subcontractors, when entering into contracts subject to the Act, to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

b. *Definitions.*

(1) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United State military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(2) "Disabled Veteran" means:

(a) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(b) A person who was discharged or released from active duty because of a service-connected disability.

(3) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under laws administered by the Department of Defense.

(4) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

(5) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

(6) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin islands, and Wake Island.

c. *Applicability.* The Act applies to all contracts for supplies, services, and construction of \$100,000 or more (including contracts with a State or local government, or any agency, instrumentality, or subdivision of that government, that does not work on or under the contract), unless waived by OFCCP.

d. *Waivers.*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Equal Opportunity for Veterans (AMS 3.6.2-12)," as follows:

(a) The CO may waive any individual contract if in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest.

(2) The COCO, with the concurrence of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

e. Department of Labor Notices and Reports.

(1) The CO will furnish notices for posting to the contractor when they are prescribed by OFCCP. See the DOL website.

(2) Contractors will submit a report (Standard Form VETS-100, "Federal Contractor Veterans' Employment Report") at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clauses "Equal Opportunity for Veterans," have been waived.

f. Collective Bargaining Agreements. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

g. Complaint Procedures. The CO must forward any complaints about administration of the Act to the Veteran's Employment and Training Service of DOL, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

h. Actions Because of Noncompliance. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause.

16 Employment of the Disabled Revised 7/2007

a. Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), P.L. 93-112, section 503, and 41 CFR Parts 60-741 to 60-642 require Government contractors and subcontractors, when entering into contracts subject to the Act, to take affirmative action to employ, and advance in employment, qualified disabled individuals without discrimination based on their physical or mental disabled.

b. *Applicability.* The Rehabilitation Act applies to all contracts for supplies, services, and construction of \$10,000 or more unless waived by the Secretary of Labor. The Act does not apply to contracts with a State or local government (or any agency, instrumentality, or subdivision of that government) that does not work on or under the contract.

c. *Waivers*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Affirmative Action for Disabled Workers," as follows:

(a) The CO may waive any individual contract if deemed to be in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest and:

(i) It is impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(2) The COCO, with the concurrence of the Director of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify the Director of OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

(4) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal will not apply to contracts awarded before the withdrawal.

d. *Department of Labor Notices.* The CO will furnish to the contractor appropriate notices that state the contractor's obligations and the disabled individual's rights under the Employment of the Disabled program. The CO may obtain these notices from the applicable Department of Labor Regional Office,

Office of Federal Contract Compliance Programs, shown in the attached list by geographic jurisdictions.

e. *Collective Bargaining Agreements.* If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

f. *Complaint Procedures.* The CO should forward any complaints about administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

g. *Actions Because of Noncompliance.* The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause. These sanctions may include:

- (1) Withholding from payments otherwise due;
- (2) Termination or suspension of the contract; or
- (3) Debarment.

17 Forced or Indentured Child Labor Added 7/2007

a. *General.*

(1) The FAA must take action to enforce laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor (E.O. 13126). The Department of Labor maintains the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) that identifies products, by country of origin, that might have been mined, produced, or manufactured by forced or indentured child labor. The List is located at www.dol.gov/ilab.

(2) When issuing a solicitation for supplies expected to exceed \$10,000, the CO must check the List for the required product(s). The appearance of a product on the List does not bar the purchase of the item in the identified country, but rather alerts the CO that such a product may have been mined, produced, or manufactured by forced or indentured child labor.

(3) Due to current trade agreements, the appearance of any end product on the list does not apply to a solicitation or contract if the identified country of origin is:

- (a) Canada, and the anticipated value is \$25,000 or more; or
- (b) Mexico, and the anticipated value is \$64,786 or more.

(4) Except as provided in subparagraph (3) of this section, before the CO may make award for an end product of a type identified by country of origin on the List, the offeror must certify that it will not supply an end product on the List that was mined in a country identified on the List, or that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product.

(5) If a CO has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract, the CO must refer the matter for investigation to the Inspector General.

b. Violations and Remedies.

(1) Violations of this section include:

- (a) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor;
- (b) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes; or
- (c) The contractor furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.

(2) Remedies include:

- (a) Termination of the contract.
- (b) Suspension of the contractor.
- (c) Debarring the contractor for a period not to exceed 3 years.

18 Trafficking in Persons Revised 7/2018

a. Definitions.

(1) Commercial Sex Act: Any sex act on account of which anything of value is given to or received by any person.

(2) Debt Bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(3) Severe Trafficking of Persons:

(a) Sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced has not attained 18 years of age; or

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

b. General.

(1) The Trafficking Victims Reauthorization Act of 2005 (Pub. Law No. 109-164), 22 USC 7104 (g) and National Security Directive NSPD-22 require FAA to take affirmative steps for its contracts to combat all forms of trafficking in persons. Contracts must prohibit any activities on the part of the contractor, subcontractor, or employee of the contractor or subcontractor that support or promote:

(a) Severe forms of trafficking of persons;

(b) Commercial sex acts;

(c) The use of forced labor in the performance of the contract; and

(d) All other activities associated with (a) through (c) above.

(2) Contractors must take action to ensure policies are in place to combat severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(3) The FAA must take appropriate action, including termination, on contractors that support, promote, or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(4) AMS clause 3.6.2-39 “Trafficking in Persons” is required in all SIRs and contracts.

c. Violations and remedies.

(1) Violations of this section include:

(a) The contractor, subcontractor, or employee of the contractor or subcontractor engages in severe forms of trafficking in persons;

(b) Any contractor or subcontractor employee procures a commercial sex act during the performance time of the contract; or

(c) The contractor, subcontractor, or employee of the contractor or subcontractor uses forced labor in the performance of the contract.

(2) Remedies include:

- (a) Required removal of a contractor or subcontractor employee from the performance of the contract;
- (b) Suspension of contract payments until the contractor has taken the appropriate remedial action;
- (c) Loss of award fee for the period of noncompliance consistent with the Performance Evaluation Plan (PEP);
- (d) Declining to exercise available options under the contract;
- (e) Termination for default; or
- (f) Suspension or debarment.

(3) Credible Information. Upon receipt of information regarding a violation listed in this section, the contracting officer will promptly notify, in accordance with Agency procedures, the FAA Office of Security and Hazardous Material Safety (ASH) and the FAA Debarring/Suspending Official. If information regarding the violation is found to be credible, ASH must then promptly notify the DOT-IG and if appropriate, law enforcement officials with jurisdiction over the alleged offense.

The Contracting Officer may also direct the contractor to take specific steps to abate the alleged violation or to enforce the requirements of its compliance plan.

(4) Review of DOT-IG report.

- (a) The FAA Administrator will ensure that the DOT-IG provides the Contracting Officer a copy of the DOT-IG report of an investigation of a violation of trafficking in persons prohibitions specified in clause 3.6.2-39.
- (b) Upon receipt of a report from the DOT-IG that provides support for the allegations, the FAA Administrator, in accordance with FAA procedures will delegate to an authorized agency official, such as the FAA debarring/ suspending official, the responsibility to-
 - (i) Expeditiously conduct an administrative proceeding, allowing the contractor an opportunity to respond to the report;
 - (ii) Make a final determination as to whether the allegations are substantiated; and
 - (iii) Notify the Contracting Officer of the determination.

- (c) The debarring/suspending official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in AMS Debarment and Suspension Guidance to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the appropriate mitigating and /or aggravating factors specified in clause 3.6.2-39.
- (d) After a final determination that the allegations of a trafficking in persons violation are substantiated, the Contracting Officer must consider taking any of the possible remedies cited above. When determining the appropriate remedies, the Contracting Officer must consider the appropriate mitigating and/or aggravating factors specified in clause 3.6.2-39.

d. *Compliance Plan*

- (1) Contracts having at least \$500,000 for either supplies (other than commercially available off-the-shelf items) acquired overseas, or services performed outside of the United States require a compliance plan that the contractor must maintain during the performance of the contract.
- (2) This compliance plan must be appropriate to the size and complexity of the contract as well as the nature and scope of the activities to be performed for the FAA.
- (3) Specific requirements for the compliance plan are in clause 3.6.2-39. –Successful offerors on applicable acquisitions will also need to submit a certification in accordance with provision 3.6.2-45 “Certification Regarding Trafficking in Persons Compliance Plan”.

19 Reserved Revised 1/2020

20 Project Labor Agreements Revised 7/2012

a. *Definitions.*

- (1) Labor organization: a labor organization as defined in 29 U.S.C. 152(5);
- (2) Large-scale construction project: a construction project where the cost to FAA of all contracts associated with the project is \$25M or more; and
- (3) Project Labor Agreement: a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project, and is an agreement as described in 29 U.S.C 158 (f).

b. *Determination.* Consistent with Executive Order 13502, dated February 6, 2009, for all large-scale construction projects, the CO in consultation with the program office and/or COR may require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate a project labor agreement with one or more labor organizations if they determine that a project labor agreement will:

(1) Advance FAA's interest in achieving economy and efficiency in procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with the law.

The determination whether to enter into a project labor agreement must be documented in the contract file.

c. *Requirements.* All project labor agreements must:

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and other job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;

(6) Fully confirm to all statutes, regulations, and Executive Orders; and

(7) Include any additional requirements deemed necessary to meet the needs of FAA.

d. *Additional Criteria.* Additional factors that may be considered in this determination whether to use a project labor agreement include but are not limited to the following:

(1) The size and complexity of the project;

(2) The importance of the project and the need to adhere to a particular timeline;

(3) The risk of labor unrest on the project and the circumstances that may lead to a heightened risk of labor disruption. Examples of such circumstances are the history of

labor unrest in the area, the anticipated working conditions on the project related to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;

(4) The impacts of a labor disruption to the users, the operation of the facility, and the region;

(5) The costs of a delay should a labor disruption occur; and

(6) The available labor pool relative to the particular skills required to complete the project.

e. *Implementation.* When a project labor agreement is required, FAA has the following submittal options:

(1) When offers are due. The screening information request (SIR) must fully specify all requirements for the project labor agreement;

(2) From the apparent successful offeror prior to award. The SIR must require that once the apparent successful offeror has been determined, the apparent successful offeror must submit a proposed project labor agreement to the CO; and

(3) After award. The SIR must require that the project labor agreement be negotiated within a certain number of days after contract award, and that a copy of the negotiated agreement must be submitted to the CO.

f. Possible submittal requirement considerations include but are not limited to the following:

(1) A large number of anticipated offerors could render each offeror having to negotiate a project labor agreement in advance a burden that could delay the submittal of offers;

(2) Requiring submittal of a project labor agreement from all offerors in advance might reduce cost risk in that the costs of such an agreement may be more accurately factored into an offeror's proposal; and

(4) Post-award execution of a project labor agreement could undercut the benefits of such an agreement as the work on the overall project will have already started.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Attachment

Address list of DOL Regional Offices of Federal Contract Compliance Programs (OFCCP) by geographic jurisdictions.

Office of Federal Contract Compliance Programs Regional Offices

1. New York

(New Jersey, New York, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

201 Varick Street Room 750
New York, NY 10014

(212) 337-2007, (212)620-7705 (Fax)

2. Philadelphia

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Curtis Center, Suite 750 West
170 S. Independence Mall West
Philadelphia, PA 19106

(215) 861-5763 (215)861-5769 (Fax)

3. Atlanta

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Atlanta Federal Center
61 Forsyth Street, S.W.
Room 7B75
Atlanta, GA 30303

(404) 562-2424 (404) 562-2429 (Fax)

4. Chicago Region

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska)

Kluczynski Federal Building

230 South Dearborn Street

Room 570

Chicago, IL 60604

(312) 353-0335 (312) 353-2813 (Fax)

5. Dallas

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Federal Building, Room 840

525 South Griffin St.

Dallas, TX 75202

(214) 767-2804 (214) 767-2149 (Fax)

6. San Francisco

(Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington)

71 Stevenson Street

Suite 1700

San Francisco, CA 94105

(415) 975-4720 (415) 975-4723 (Fax)

Sections Revised:

3.8.2 A 4 – Support Services Contracting

3.8.2 A 14 – Other Requirements for Service Contracting

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.8.2 Service Contracting Revised 10/2008

A Service Contracting

1 General Requirements Revised 4/2006

2 Contractor Versus Government Performance Revised 4/2006

3 Inherently Governmental and Critical Functions Revised 4/2013

4 Support Services Contracting Revised ~~4/2018~~ 10/2020

5 Personal Services Revised 9/2006

6 Advisory and Assistance Services Revised 4/2006

7 Temporary Services Revised 4/2006

8 Concession Contracts Added 4/2006

9 Cafeteria/Vending Services Added 4/2006

10 Child Care Services Added 4/2006

11 Nonpersonal Health Care Services Added 4/2006

12 Guard Services Revised 4/2011

13 Contractor-Assisted Maintenance of the NAS Revised 10/2008

14 Other Requirements for Service Contracting ~~Added 4/2006~~ Revised 10/2020

15 Uncompensated Overtime Added 4/2006

16 Performance-Based Acquisition Added 4/2006

17 Services Crossing Fiscal Years Added 4/2006

18 Architect-Engineer Services Revised 7/2013

19 Cloud Computing Services Revised 7/2018

B Clauses

C Forms Revised 4/2006

T3.8.2 Service Contracting Revised 10/2008

A Service Contracting

1 General Requirements Revised 4/2006

a. A service contract directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Services may be either nonpersonal or personal, and may be performed by professional or nonprofessional personnel on an individual or organizational basis.

b. When planning, acquiring, and managing services, the service team should:

- (1) Clearly define needs, outputs, objectives, or problems to be solved;
- (2) Ensure Federal employees retain inherently Governmental functions;
- (3) Avoid personal services relationships, unless approved in advance; (4)
Follow ethics requirements and protect against conflicts of interest; (5)
Adequately monitor contractor performance; and
- (6) Appropriately document the basis for decisions.

2 Contractor Versus Government Performance Revised 4/2006

a. Government-wide policy is to rely on the private sector for commercial services, if certain criteria are met, consistent with Office of Management and Budget (OMB) Circular No. A-76, (Revised), "Performance of Commercial Activities," and the Supplement to Circular No. A-76. This Circular requires agencies to:

- (1) Identify activities performed by Federal employees as either commercial or inherently Governmental;
- (2) Perform inherently Governmental activities with Federal employees; and
- (3) Use a cost competition between the private sector and Federal employees to determine if Federal employees should perform a commercial activity.

b. When a Federal Activities Inventory Reform (FAIR) Act inventory identifies an in-house function as commercial in nature and suitable for public-private competition, the Contracting Officer should refer to OMB Circular A-76 and the Supplement for guidance. (See AMS Procurement Guidance

T3.2.1.3 “Implementing OMB Circular No. A-76” for AMS-specific guidance on conducting A-76 competitions).

3 Inherently Governmental and Critical Functions Revised 4/2013

a. Inherently Governmental Functions.

(1) The FAA cannot contract for inherently Governmental functions. Inherently Governmental functions are those activities so closely related to the public interest that only Federal employees can perform the functions. These functions include activities that require either use of discretion in applying Government authority, or use of value judgments in making decisions for the Government. Governmental functions normally fall into two categories:

- (a) The act of governing, which requires discretionary use of Government authority; or
- (b) Decisions affecting monetary transactions and entitlements.

(2) The following functions are considered inherently Governmental (this list is not all inclusive):

- (a) Determining FAA program priorities and budget requests;
- (b) Conducting monetary transactions or entitlements;
- (c) Interpreting and executing laws that will bind FAA to take or not take some action by contract, policy, regulation, authorization, or order;
- (d) Determining FAA policy;
- (e) Exercising ultimate control over acquisition, use, or disposal of FAA’s property, including collecting, controlling, or disbursing funds, and on what terms;
- (f) Determining budget policy, guidance and strategy;
- (g) Directing and controlling Federal employees;
- (h) Selecting or non-selecting individuals for Federal employment (including interviewing for employment)
- (i) Approving position descriptions and performance standards for Federal employees;

(j) Determining and defining supplies or services to be acquired by FAA (the contractor may not identify its own work requirements, or write its own statement of work or task assignments);

(k) Approving contractual documents, such as those documents defining requirements, incentive plans, and evaluation criteria;

(l) Awarding, administering, and terminating contracts (including functions delegated to a Contracting Officer's Representative);

(m) Determining whether contract costs are reasonable, allocable, and allowable; (n) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, General Accountability Office, or other Federal audit entity;

(o) Approving FAA responses to Freedom of Information Act (FOIA) requests (other than routine responses that do not require the exercise of judgment whether documents are released or withheld), and approving FAA responses to the administrative appeals of denials of FOIA requests;

(p) Approving FAA licensing actions and inspections; and

(q) Performing adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

(3) Effort under contracts requiring advice, recommendations, reports, analyses, or other similar work is considered effort closely associated with performing inherently Governmental functions. Such closely associated effort could influence the authority, accountability, and responsibilities of FAA officials. These contracts require active monitoring and administration to ensure contractors do not perform inherently Governmental functions and Federal employees properly exercise their authority.

(4) Prior to issuing a screening information request (SIR) or contract for services, the CO must determine whether the services are inherently Governmental functions.

b. Critical Functions.

(1) "Critical functions" are functions necessary for an agency to effectively perform and maintain control of its mission and operations. These functions are typically recurring and long-term.

(2) Examples of critical FAA functions include (this list is not all-inclusive):

- ☐ Aviation safety;
- ☐ Air traffic operations;

- ☐ FAA information systems; and
- ☐ Security and hazardous material safety

(3) Before issuing a SIR or contract for services, the CO and program official should determine if the procurement is in support of a critical FAA function. Where a critical FAA function is not inherently Governmental, both FAA and contractor employees may support the function.

(4) The CO and program official should use informed judgment when determining whether the services support a critical FAA function. In making this determination, the overall importance of the function to FAA's mission and operations should be considered. The more important the function, the more important it is that FAA have the internal capability to maintain control of its mission and operations. Sufficient internal capability generally requires that FAA have an adequate number of Federal employees having the necessary expertise to oversee any contractors supporting the critical function, and perform the needed work without adverse impact in the event of contractor default. The CO and program official must monitor the contractor performance supporting a critical FAA function during contract performance.

c. *Reporting.* COs will indicate in PRISM at the beginning of the "Inherently Governmental Functions" field whether the services are closely associated with inherently governmental functions, supporting critical functions, or a combination of closely associated with inherently governmental functions and supporting critical functions. If none of these, the services will be indicated as "other functions." If not a services contract, NA (Not Applicable) will be indicated.

4 Support Services Contracting Revised 1/2018

a. *Description.* Support services contracts require contractor personnel with specific expertise, knowledge, skill, or experience to help implement or improve the FAA's systems, programs, functions, or goals. Although not a comprehensive description, support services include:

Technical, engineering, and scientific expertise, advice, analysis, studies, or reports in areas such as: information technology design, programming, networking, installation, operation, data management, and customer support; definition and design of systems, equipment, software and facilities; system engineering; requirements management and specification development; modeling and simulation; risk analysis and management; cost estimating; human factors engineering; information security; testing and operational evaluation; logistics support analysis; technical writing; and expertise and analysis on the effectiveness, efficiency, or economy of technical operations of equipment, systems, services, or procedures.

Professional, management, and administrative expertise, advice, analysis, studies, or reports in areas such as: program management, execution, and control; procurement management; employee training and development; payroll and finance administration; budget formulation and execution; cost and benefit analysis; economic and

regulatory analysis; environmental analysis; management and organizational evaluation; staffing, workload and workflow analysis; conferences, seminars, and meetings; public events and writing; and expertise and analysis on the effectiveness, efficiency, or economy of management and general administrative operations and procedures.

Note: Consistent with the definition of a service contract under “General Requirements” above, support services do not include contracts for leasing facilities or equipment, subscription services, commercial licensing agreements, or anything else furnishing an end item of supply rather than performing an identifiable task. Additionally, services subject to the Service Contract ~~Aet~~Labor Standards (e.g., janitorial, grounds maintenance, guard services, mail delivery, etc.) are not support services. Also excluded are services for direct support of FAA operations (e.g., telecommunications, flight services, satellite services, utilities, etc.).

b. *Analysis and Rationale.* The entire service team (Contracting Officer (CO), Contracting Officer’s Representative (COR), attorney, and program official) should ensure:

- (1) There is a good business case, considering need, benefit, cost, and alternatives, for acquiring support services;
- (2) Support services do not overlap or duplicate services being acquired elsewhere in FAA;
- (3) There is a solid, well-documented rationale for selecting the contractor; and
- (4) The FAA has the expertise to monitor the contractor’s performance.

c. *Acquisition Strategy Review Board (ASRB).* Support services expected to have a total estimated value of \$10 million or more require the review and approval process specified in the Acquisition Strategy Review Board (ASRB) Standard Operating Procedure. The ASRB Standard Operating Procedure is located at the Acquisition & Contracting (AAQ) KSN site (FAA only).

d. *T&M/LH.* When support services are obtained on a time and materials or labor hour basis, the CO and program official/COR should ensure:

- (1) The statement of work clearly defines expected outputs or objectives;
- (2) The contract or task includes only those labor categories necessary to achieve required outputs, and the basis for selecting the labor categories is documented in the contract file;
- (3) The contract identifies specific education, experience, and other appropriate requirements for each labor category;
- (4) The solicitation requires the offeror to propose specific personnel for the labor categories, and to provide a resume for each proposed person. The solicitation may include a provision for submitting resumes within a reasonable time after contract award, subject to CO’s approval of each proposed person. The provision should specify any costs incurred before approval of

resumes may be disallowed if the CO determines a person's qualifications do not meet the terms and conditions of the contract;

(5) The source evaluation team reviews the offeror's proposed personnel to ensure that each person meets the position requirements for the labor category. For offerors allowed to submit resumes after award, the CO and program official/COR review resumes to ensure proposed personnel meet position requirements;

(6) Review of contractor's invoices includes a comparison of labor categories, rates and hours charged to the contract with the work actually performed;

(7) The contractor submits employee resumes and obtains CO's approval of any personnel changes after contract award, and the contract file is documented with CO's approval of the personnel changes; and

(8) Periodic spot checks of contractor employee's qualifications against contractually-specified qualifications.

e. *Additional Procedures.* Support services obtained through a multiple award schedule or program, e.g., eFAST, must follow all additional required procedures, such as competing task orders or comparing rates and capabilities among multiple sources.

f. *Invoices.* The CO must review and approve all invoices submitted under a service contract. This excludes invoices provided under the purchase card program.

g. *Ceiling.* A contract ceiling established at the time of initial award must have a documented relationship to the amount of work expected to be performed. This applies to contract types in which ceilings are required, i.e., time and materials.

h. *Determining Final Content.* Government personnel, and not contractors who will perform the work, must always determine the final results of market surveys and prepare the final content of statements of work and independent Government cost estimates.

i. *Conflict of Interest.* An apparent or actual conflict of interest must be avoided. Support services solicitations and new contracts with a total value of \$10,000 or more, and modifications of \$1,000,000 or more to existing support services contracts, must include AMS clause 3.1.7-6 "Disclosure of Certain Employee Relationships." The CO must notify legal counsel when the contractor discloses a former FAA employee or relative of a current FAA employee working under the contract, and when the CO has reason to believe the contractor has made an incomplete or improper disclosure. The CO collects facts surrounding each contractor disclosure and, with legal counsel, assesses the information to determine whether an apparent or actual conflict of interest exists. Depending on the assessment, the CO may require the contractor to provide and implement a plan to avoid, neutralize, or mitigate a conflict of interest involving its employee(s). The CO documents this assessment and any actions taken.

j. *Contractor Identification.* Contractors providing support services for FAA, as defined in this Section, must identify themselves as supporting an FAA office or program when there is any reasonable question regarding their status. This identification must be in all forms of support-related communication including meetings and teleconferences, individual phone calls, and email. For example, in meetings where everyone is introducing themselves or when making or receiving calls through the FAA telephone system, such contractors must identify themselves as contract support. At meetings where there is a “sign-in” sheet or similar roster, contractors must identify themselves as contract support. Similarly, the signature block of support contractor personnel using the FAA email system (in addition to the “ctr” in the email address) must identify the individual as a support contractor. Such identification will reduce the potential for appearances of an employer-employee relationship between FAA and its contract support personnel. FAA program managers, CORs, and contracting personnel are responsible for ensuring compliance with this requirement as part of the administration of individual support contracts.

5 Personal Services Revised 9/2006

a. *Employee/Employer Relationship.* A personal service contract is a contract that, by its express terms, or *as administered*, establishes what is tantamount to an employer-employee relationship between the FAA and the contractor’s personnel. Such a relationship is created when an FAA employee exercises relatively continuous supervision and control over one or more contractor employees.

b. *Supervision.* Supervision includes directing or assigning work to specific contractor employees; directing that a contractor employee be hired, fired, promoted, rewarded, transferred or granted leave, or exercising control over how specific contractor employees perform their job. Any one of these elements might create an employer-employee relationship and therefore a personal services contract. In addition, if the nature of the work or ability of the contractor employee(s) is such that they do not require or receive much supervision, but a FAA employee provides what supervision the contractor employee receives, then the contract is for personal services.

c. *Warning Signs.* Possible warning signs of when supervision might be present include: performance of the work in FAA furnished offices or property; principal tools and equipment are furnished by the FAA; the services are applied directly to the integral efforts of the FAA, or an organizational subpart in furtherance of that organization’s assigned function or the FAA mission; comparable services are performed in FAA or other agencies using Government employees; and the need for the service provided can reasonably be expected to last beyond one year. The presence (or absence) of one or even all of these factors in a particular contract does not necessarily determine whether a contract is for, or being administered as, a personal services contract. Instead the presence of these factors indicates that the contract as written or administered, must be particularly carefully scrutinized to assure that FAA employees are not supervising contractor employees, and thus creating a personal services contract.

d. *Monitoring/Technical Direction.* Simple monitoring of a contractor’s performance, providing technical direction, issuing task orders, or providing comments on the contractors’ work, in accordance with the contract’s terms, do not in themselves create a personal services contract.

Performing any of these functions in a manner not provided for by the contract, however, could create a personal services contract as well as expose the FAA to additional liability.

e. *Determination.* The FAA may award personal services contracts when the vice president of the relevant service organization (for ATO contracts) or head of the line of business (for non- ATO contracts) determines that a personal service contract is in the best interest of the agency after thorough evaluation which includes, but is not limited to the following factors:

- (1) Federal and state income tax requirements;
- (2) Workmen's compensation, social security and related implications;
- (3) The FAA's potential liability for services performed;
- (4) The availability of temporary hires to perform the desired services;
- (5) Demonstration of tangible benefits to the agency;
- (6) A detailed cost comparison demonstrating a financial advantage to the FAA from such contract;
- (7) Potential post employment restrictions applicable to former employees; and
- (8) A legal determination that the work to be performed is not inherently governmental. The required determination is non-delegable and must be reviewed for legal sufficiency by the Office of the Chief Counsel. Additionally, the vice president (for ATO) or head of the line of business (for non-ATO) must provide a copy of each approved determination to the Acquisition Executive.

f. *Benefits to the FAA.* Although personal services contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to the FAA. Therefore, this authority should be conservatively applied.

g. *Personnel Involvement.* Prior to entering into a personal service contract, the Contracting Officer should make arrangements with the appropriate personnel office concerning federal, state, and other tax withholding requirements.

6 Advisory and Assistance Services Revised 4/2006

a. Advisory and assistance are services provided under contract by nongovernmental sources to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of managerial or hardware systems. Advisory and assistance contracts provide outside points of view from individuals with special skills or knowledge from industry, universities or research foundations. The use of these services helps to prevent too-limited judgments on critical issues, facilitating alternative solutions to complex issues. Examples of advisory

and assistance functions include studies, analyses and evaluations; and management and professional support (including consultants, experts and advisors).

b. Before awarding an advisory and assistance contract, the Contracting Officer should consult with legal counsel about any funding restrictions that may apply to the procurement.

7 Temporary Services Revised 4/2006

The FAA may obtain temporary services from private agencies, or may contract directly with individuals, for up to 240 work days during any 24 month period subject to the following:

- a. The guidelines concerning personal service contracts must be met (see "Personal Services Contracts," above). For example, when obtaining secretarial services on a temporary basis, FAA personnel may not recruit, test, select, reassign, reward, grant leave to, approve time cards, discipline, or separate a temporary help service employee. The contractor is responsible for taking such actions, because it is the employer.
- b. Temporary service contracts are appropriate to fulfill a critical need, where use of a temporary appointment (up to one year) or a term appointment (one to four years) is not appropriate or feasible. However, temporary service contracts should not be used to circumvent controls on employment levels. For example, the FAA may not use temporary help services merely because hiring is frozen or ceiling levels are insufficient.
- c. Temporary service contracts may not be used in lieu of appointing a surplus or displaced Federal employee as required by the President's memorandum of September 12, 1995, titled "Career Transition Assistance for Federal Employees."

8 Concession Contracts Added 4/2006

- a. A concession contract is a specialized contractual agreement between FAA and a contractor (the concessionaire). These contracts are normally used when the FAA requires a service to be performed, the concessionaire performs the service and collects funds from third parties, and the FAA provides significant support, such as facilities. Concession contracts may require the concessionaire to pay the FAA. Examples of concession contracts include food service and day care centers.
- b. *General Requirements.* Each concession contract is unique and tailored to the specific situation. Concession contracts need not include the clauses normally required by the FAA. However, the contract must clearly define the rights and responsibilities of the parties. Among the issues that the Contracting Officer must consider:

- (1) What facilities or services will FAA provide to the concessionaire?

- (2) Will the facility be provided at no cost, or will the concessionaire be required to pay a use fee?
- (3) Are other payments to FAA required, and if so, how will they be calculated?
- (4) How will the quality of service be evaluated, and what types of corrective actions may be initiated by FAA for inadequate performance?
- (5) What liabilities will be assumed by each party?
- (6) What labor and/or compensation standards are to be established for concessionaire employees?
- (7) What are the parties' responsibilities for property maintenance, repair and replacement?
- (8) What insurance requirements are advisable?
- (9) Are there public safety and health considerations which must be addressed?
- (10) What termination rights should be included?
- (11) What provisions for changes should be included?
- (12) Is the work to be performed in spaces which subject the concessionaire to FAA policies?
- (13) What services will the FAA require the concessionaire to provide (e.g., hours of operation, full service cafeteria, etc.).
- (14) Will there be any restrictions on who is allowed to use the services? For example, federal laws require 50 percent of children in child care facilities located on federal facilities to be dependents of federal employees. In the case of fitness centers, will membership be limited to federal employees only?
- (15) Will any FAA-furnished property be provided, and if so, how will it be accounted for?
- (16) Are there any licensing requirements which must be met?
- (17) Are there any limitations on the types of service or products that may be sold under the concession contract? For example, cafeterias are prohibited from competing with snack bars being operated under the Randolph-Sheppard Act for items such as pre-packaged goods (candy bars, canned soda, individual packages of potato chips, etc.). Vending services are prohibited from selling or distributing tobacco products on federal property.

9 Cafeteria/Vending Services Added 4/2006

Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) must be given priority in the location and operation of cafeterias and vending facilities, including vending machines on property owned, leased, or otherwise acquired or controlled by the FAA, provided the location or operation of such facility would not adversely affect the interests of the United States. Additional guidance on implementation of this law is at 34 C.F.R. Part 395 and AMS Procurement Guidance T3.8.4 “Required Sources of Products/Services.”

10 Child Care Services Added 4/2006

Child care services include child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. These contracts must include requirements for criminal history background checks on employees who will perform child care services (42 U.S.C. 13041), any special state requirements (such as cleanliness requirements), and security/screening requirements for anyone (including janitors and repairmen) that comes in contact with children.

11 Nonpersonal Health Care Services Added 4/2006

For nonpersonal health care contracts with physicians, dentists and other health care providers, the Contracting Officer should require the contractor to obtain and maintain appropriate levels of malpractice insurance and include similar provisions in its subcontracts with other providers. See AMS clause 3.8.2-15, "Indemnification and Medical Liability Insurance."

12 Guard Services Revised 4/2011

The FAA may contract for guard services. Typical requirements for guard services include, but are not limited to: U.S. citizenship, minimum age of 21, high school diploma or equivalent, firearm training, testing and certification, and other additional technical training specified in the contract scope of work. Each guard must complete the following so that a NACI background investigation can be completed by the Office of Personnel Management:

- a. OMB I-9, Eligibility Verification;
- b. DOT 1681, ID Card/Credential Application;
- c. SF-85, Questionnaire for Low Risk Positions;
- d. OF-306, Declaration for Federal Employment; and

- e. Fingerprint Cards.

13 Contractor-Assisted Maintenance of the NAS Revised 10/2008

Contractor assistance may be used to augment FAA's workforce for maintenance and maintenance and restoration of National Airspace System (NAS) equipment, sub-systems, and systems to accomplish the mission of the NAS. Contractor maintenance support includes all maintenance performed by non-Federal personnel. Maintenance includes, but is not limited to, evaluating equipment and system operation, and evaluating documentation such as facilities logs, data files, technical performance records, and administrative and logistics support. Considerations for contracts for non-Federal personnel for maintenance and restoration of the NAS systems are:

- a. All maintenance performed by contractors on NAS equipment must conform to FAA order 6000.15 "General Maintenance Handbook for National Airspace System (NAS) Facilities," system/sub-systems/equipment technical manuals, and all appropriate FAA directives.
- b. Contractor personnel who perform maintenance activities on NAS equipment must have at a minimum the same level of knowledge, skills, and abilities required of FAA personnel maintaining the same or similar equipment, sub-systems, or systems. The contractor must provide and maintain the necessary documentation to support its level of knowledge, skill and ability.
- c. Certified pre-employment drug testing is mandatory for all contractor personnel before performing work for FAA. Contractor personnel maintaining any part of the NAS must be subject to random drug and alcohol testing according to DOT 3910.1 "Drug and Alcohol-Free Departmental Workplace."
- d. Contractor personnel must meet FAA security requirements. Contractor personnel are subject to background investigations and technical inspections at the same level as performed for FAA personnel who are providing maintenance support of the NAS systems.
- e. Contracts for maintenance support of the NAS systems are subject to union coordination according to current union contracts, applicable orders, rules, regulations, and any established national and local Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).
- f. Contract limitations on NAS equipment/systems must not exceed the following guidance:
 - (1) For a period not to exceed two years during which FAA workforce training and/or support requirements are being satisfied.
 - (2) For a period not to exceed two years during which sufficient FAA employees are recruited and trained to assume full maintenance.

(3) For an extended period not to exceed five years when it is determined to be in the best interest of the Government.

g. Contract for maintenance support are excluded from this guidance if they fall within the follow area:

(1) Local or regional contracts not providing periodic or on-call maintenance for equipment that is an integral part of the NAS reportable facility or service. Examples of exclusions include janitorial, tower maintenance, and buildings and grounds.

(2) Contracts for systems that are in the precommissioned status, even though the testing may consist of periods of operational use.

(3) Contracts that have a duration of less than one year and do not relate to restoration/maintenance of critical NAS equipment, e.g., radar and air traffic control frequencies.

(4) Contracts issued for telephone or other services, e.g., computer repair.

(5) Contracts maintained by the FAA Logistics Center such as exchange and repair.

14 Other Requirements for Service Contracting Added 4/2006

a. *Conflict of Interest and Ethics Requirements.* As applicable, solicitations and contracts must include conflict of interest and ethics-related provisions consistent with AMS policy 3.1.5 - 3.1.7.

b. *Key Personnel.* Solicitations and contracts should include AMS clause 3.8.2-17 “Key Personnel and Facilities,” or a similar clause, to list named individuals who are considered key for successful performance of a contract. The Contracting Officer must approve substitution of any key personnel.

c. *Labor Standards.* The Contracting Officer should include applicable labor standards, such as the Service Contract ~~Aet~~Labor Standards or Davis-Bacon Act, in solicitations and contracts when appropriate. (See AMS Procurement Guidance T.3.6.2 “Labor Laws” for additional guidance for determining when such provisions are appropriate).

d. *Security Requirements* The service team must take appropriate actions to protect the Government’s interest when contractor employees, subcontractors, or consultants may have access to FAA facilities, classified information, sensitive information, or resources. (See AMS Procurement Guidance T3.14.1 “Security” for additional guidance on security requirements for contractor personnel).

e. *Insurance Requirements* The contract should require the contractor to obtain appropriate levels of insurance coverage. Some situations may require special types of coverage to address higher risks, such as those for research or health care that involve personal risk where higher than normal insurance premiums are inherent in the requirement.

f. *State and Local Requirements.* Contracts may include state or local requirements, provided that the FAA does not waive its sovereign immunity. The Contracting Officer should consult with legal counsel about the potential effect of any state or local requirements.

15 Uncompensated Overtime Added 4/2006

a. Contractor's use of uncompensated overtime is not encouraged.

b. When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation must require offerors to identify in their proposals and subcontractor proposals:

(1) Uncompensated overtime hours; and

(2) Uncompensated overtime rate for direct charge, Fair Labor Standards Act--exempt personnel (such as executive, professional, and administrative employees). This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

c. The Contracting Officer must ensure that use of uncompensated overtime on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements. The Contracting Officer must conduct a risk assessment and evaluate, for award on that basis, any proposals that reflect factors such as: unrealistically low labor rates or other costs that may result in quality or service shortfalls, and unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

16 Performance-Based Acquisition Added 4/2006

a. *Performance-Based Acquisition (PBA).* Performance-based acquisition is a method of structuring all aspects of an acquisition around the purpose of the work to be performed. The contract requirements are described in clear, specific, and objective terms with measurable outcomes, as opposed to describing either the manner by which the work is to be performed or broad and imprecise statements of work. It is the preferred method for describing work in service contracts and should be used when appropriate. PBA typically includes:

(1) Performance requirements that define work in measurable, mission-related terms where the accomplishment of the effort is measurable;

(2) Performance standards (i.e., quality, quantity, and timeliness) tied to the performance requirements;

(3) A Government quality assurance (QA) plan that describes how the contractor's performance will be measured against the performance standards;

(4) If the acquisition is either critical to agency mission accomplishment or requires relatively large expenditures of funds, positive and negative incentives tied to the government QA plan measurements.

b. *Statements of Work.* When preparing statements of work, the service team should, to the maximum extent practicable:

(1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided;

(2) Establish minimum position requirements but avoid explicit qualification descriptions of personnel (i.e. years' experience, degree(s), certification(s), etc.), with the exception of "key" personnel. If "key" personnel and qualification descriptions are included in a contract, administration of the contract must be in accordance with Headquarters Contracting Divisions' Standard Operating Procedure (SOP) – "Ensuring Compliance with Contractor Personnel Qualifications Requirements" (FAA only), or, if applicable, Region/Center procedures.

(3) Enable assessment of work performance against measurable performance standards;

(4) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and

(5) Avoid combining requirements into a single acquisition that is too broad for the FAA or a prospective contractor to manage effectively.

c. *PBA Resource Information.* The Office of Federal Procurement Policy's "Seven Steps to PBSA" guide is available online and provides detailed information, examples, and other links for PBA.

d. *Service Team Responsibility.* Service teams should consider PBA as the preferred method to obtain services, if appropriate, and should consider the feasibility of converting existing contracts and tasks to performance-based acquisitions, if appropriate.

17 Services Crossing Fiscal Years Added 4/2006

a. *Services Funded with Annual Appropriations.* When the period of a contract, option, or order does not exceed one year, severable services funded by annual appropriations may begin in one fiscal year and end in the next fiscal year.

b. *Training Services Crossing Fiscal Years.*

(1) *Determining Nonseverability.* In certain instances, training courses may be treated as nonseverable services that permit current fiscal year funds to be used for training occurring in the next fiscal year. When the training obligation is incurred and performance begins in one fiscal year, the entire cost may be charged to that year even though performance extends into the following year. However, if performance does not begin in the fiscal year in which the obligation was made (i.e., execution of the contract), the Contracting Officer should use the following criteria to determine nonseverability and document the determination in writing:

(a) A valid need for training exists in the current fiscal year;

(b) The need cannot be met during the current fiscal year due to circumstances beyond the agency's control; and

(c) The time period between procurement of the services and performance of the services is not excessive.

(2) *Justifying the Time Lapse.* The Contracting Officer should evaluate whether the time period is not excessive under (1)(a) above on a case by case basis using the specific factors that support the determination. The Comptroller General has determined that a two week lapse of time between the procurement of the services and the date performance began was not excessive where the need for the training arose six months earlier, but the vendor controlled the scheduling of the training class which was not available until the following fiscal year.

18 Architect-Engineer Services Revised 7/2013

a. *Description.* Architect-Engineer (A-E) services include:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

(2) Professional services of an architectural or engineering nature performed by contract that are associated with:

(a) Research;

(b) Planning;

- (c) Development;
- (d) Design;
- (e) Construction;
- (f) Alteration;
- (g) Repair or improvement of real property.

(3) Other professional services of an architectural or engineering nature, and incidental services commonly performed by members of the architectural and engineering professions (and individuals in their employ), including:

- (a) Studies;
- (b) Investigations;
- (c) Surveying and mapping;
- (d) Tests;
- (e) Evaluations;
- (f) Consultations;
- (g) Comprehensive planning;
- (h) Program management;
- (i) Conceptual designs;
- (j) Plans and specifications;
- (k) Value engineering;
- (l) Construction phase services;
- (m) Soils engineering;
- (n) Drawing reviews;
- (o) Preparation of operating and maintenance manuals; and
- (p) Other related services.

b. General.

(1) The statement of work (SOW) for a design contract must require the architect- engineer, when preparing the construction design specifications or other deliverables, to specify compliance with applicable environmental or conservation standards pursuant to AMS Procurement Guidance T3.6.3. These standards include:

- (a) Pollution control, clean air and water;
- (b) Energy and water conservation and efficiency;
- (c) Hazardous material identification and material safety data;
- (d) Use of recovered recycled materials;
- (e) Radioactive material;
- (f) Environmentally Preferable and Energy-Efficient Products and Services;
- (g) Ozone depleting substances;
- (h) Toxic chemical release; and
- (i) Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings

(2) No construction contract may be awarded to the firm that designed the project, unless the project is being solicited and awarded as a design-build.

(3) The SIR should detail the format of the designs and deliverables to be submitted to the FAA; however the SIR should not preclude the firm from proposing use of modern design methods.

(4) Any information deemed Sensitive Unclassified Information (SUI) must be handled, released, or distributed per guidelines established in AMS Procurement Guidance T3.14.1 and FAA Order 1600.75.

c. Evaluation Criteria.

(1) The FAA should evaluate offers for A-E services using appropriate criteria. Examples of evaluation criteria that could typically apply to A-E services include:

- (a) Professional qualifications of the A-E firm;
- (b) Specialized experience and technical competence in the type of work required;

- (c) Ability to perform the services in a timely manner;
- (d) Past performance on contracts of a similar scope and complexity, including cost control, quality of work, and compliance with schedules;
- (e) Geographical location and knowledge of the project location, if warranted by the nature and size of the project; and
- (f) Other criteria as needed.

(2) The FAA may conduct design competitions where firms are evaluated based on their conceptual design for a project. Design competitions may be appropriate when:

- (a) Unique situations, such as memorials or structures of unusual national significance, are present;
- (b) Sufficient time is available to submit and evaluate conceptual drawings; and
- (c) Design competition will substantially benefit the project and FAA.

d. Evaluation Boards.

(1) If appropriate, FAA may use ad hoc or standing A-E evaluation boards to assess A-E proposals. Duties of these boards may include:

- (a) Review of design packages or proposals;
- (b) Evaluation of offerors according to factors established in the SIR;
- (c) Holding discussions as necessary; and
- (d) Preparing a source selection report.

(2) Evaluation boards should include members specializing in architecture, engineering, construction, and acquisition. Non-Government advisors may serve on these boards.

(3) An offeror cannot be eligible for award while any of its principals or associates are members of the evaluation board.

e. Liability.

(1) A-E contractors must be responsible for the professional quality, technical accuracy, and coordination of all services required under their respective contracts.

(2) A-E firms may be liable to the Government for costs resulting from errors or deficiencies in designs furnished under contract. In coordination with technical personnel and legal counsel, the CO must consider the extent to which the A-E contractor may be reasonably liable when modifying a construction contract due to errors or deficiencies in design provided under contract.

(3) After considering the FAA's best interest and all reasonable costs involved in recovery efforts, the CO must include in the contract file a written statement of the basis for the decision to recover or not to recover any costs from an A-E contractor that resulted from errors or deficiencies.

19 Cloud Computing Services Revised 7/2018

a. FAA requires that contracts for cloud computing services (including Software as a Service (SaaS) defined as a software licensing and delivery model in which the software is based on a subscription and is centrally hosted) must:

(1) Adhere to Federal Risk and Authorization Management Program (FedRAMP) compliance requirements.

(2) Select a FedRAMP-certified Cloud Service Provider (CSP).

(3) Be granted Authority to Operate (as defined in FedRAMP website at <https://www.fedramp.gov>) from the designated FAA Authorizing Official (AO).

(4) CSPs granted an Authority to Operate by other agencies or that are in the process of acquiring FedRAMP certification may be selected, but systems being hosted or SaaS licenses being purchased must not be placed into production at the FAA without a signed Authority to Operate from the designated FAA AO.

b. In addition to the use of a FedRAMP-certified CSP and the FedRAMP baseline controls, all FAA cloud-hosted systems must implement additional FAA security controls as defined on the FedRAMP website, applicable FAA Policy, and the DOT Departmental Cybersecurity Compendium to operate securely based on the current DOT and FAA policy.

c. A CSP must maintain their FedRAMP certification throughout the contract and adhere to continuous FAA monitoring that ensures the security posture of the CSP throughout the lifecycle of the service agreement. The security posture of the CSP is the implementation of security controls to protect the information contained on and the infrastructure of CSP systems that must be maintained throughout the life of the contract.

d. The CSP must continue to maintain the security posture of additional FAA security controls upon which the FAA ATO is based. A Third Party Assessment Organization (3PAO) must perform a security assessment on the CSP at least annually. The CSP must inform the FAA if there is a security breach or outage, with the protocol for notifying the FAA as well as the United States Computer Readiness Support Team (US-CERT) of such a breach or outage set by each individual contract.

e. All FAA contracts using cloud technology including SaaS must be documented in the systems security assessment and maintained in FAA FISMA system inventory and follow the Office of Management and Budget (OMB) reporting requirements.

f. All FAA contracts using cloud technology must be coordinated from initial procurement planning with the FAA Office of Cloud Services (AIF-001).

B Clauses

[view contract clauses](#)

C Forms Revised 4/2006

[view procurement forms](#)

Section Revised:

3.8.7 A 2 – Dismantling, Demolition and Removal of Improvements

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.8.7 Construction Contracting Revised 8/2009

A Construction Contracting Added 7/2007

1 General Added 7/2007

2 Dismantling, Demolition and Removal of Improvements Revised ~~4/2017~~ 10/2020

3 Salvageable Property Added 7/2007

4 Laws, Regulations and Standards Revised 4/2017

5 Design-Build Revised 1/2016

6 Reserved Revised 10/2014

7 Planning and Pre-Solicitation Revised 7/2016

8 Pre-Award Revised 1/2016

9 Post-Award Revised 10/2018

10 Contract Acceptance Inspection (CAI) Revised 4/2012

11 Contract Completion/Closeout Revised 8/2009

B Clauses Added 7/2007

C Forms Added 7/2007

T3.8.7 Construction Contracting Revised 8/2009

A Construction Contracting Added 7/2007

1 General Added 7/2007

- a. Guidance in this section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services. In the event that the portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated, AMS guidance applicable to the predominant purpose of the contract applies.
- b. "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.
- c. When performing construction, alteration, or repair work in FAA-leased space, the Contracting Officer (CO) must consult with his or her local Real Estate Contracting Officer (RECO) to determine FAA's alteration rights and responsibilities.

2 Dismantling, Demolition and Removal of Improvements Revised 4/2017

- a. If a contract is solely for dismantling, demolition, or removal of improvements and will exceed \$10,000, the Service Contract ~~Act~~Labor Standards applies unless further work is contemplated that will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

3 Salvageable Property Added 7/2007

- a. The procurement team (CO, program official, legal counsel, and other support staff) should consider the usefulness to FAA of all salvageable property. Any of the property having a salvage value that is less than its usefulness to FAA should be expressly designated in the contract for retention by FAA. The contract may provide that:
 - (1) The FAA pays the contractor for the reasonable costs of the dismantling or demolition of the structure(s);
 - (2) The contractor pays FAA for the right to salvage and remove the materials resulting from the dismantling or demolition operation; or

(3) A combination of both. Both the FAA and contractor must ensure compliance with environmental laws and regulations, including handling of hazardous waste.

b. The procurement team should determine the fair market value of any property not to be retained by FAA, because the contractor may receive title to this property. Its value will therefore be important in determining what payment, if any, should be made to the contractor, and whether additional compensation will be made if the contract is terminated. Personal Property Managers, in conjunction with the procurement team, must approve the disposition of Government property to be transferred to contractors under dismantling, demolition or removal of improvements contracts.

4 Laws, Regulations and Standards Revised 4/2017

a. *Davis-Bacon Act.* The Davis-Bacon Act applies to construction contracts greater than \$10,000.

b. *State Regulation of Federal Construction Projects.*

(1) FAA contractors may encounter requests from State and local governments for the FAA's contractors to obtain building permits, zoning approval, sanitation approval, etc. Based on the "Supremacy" clause of Article 6 of the United States Constitution, construction contractors are not required to obtain most permits or approvals for work done on Federal construction projects. The States do have enforcement authority for safety and environmental protection as specified by the Occupational Safety and Health Administration (OSHA), the Comprehensive Environmental Response, compensation and Liability (Superfund) Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA).

(2) Contractors who encounter attempts by State or local government entities to assess various types of fees against a FAA construction project should be advised to inform the CO immediately if the assessing entity attempts in any way to prevent or hinder the contractor at the job site. The CO should seek legal advice from either Regional Counsel or AGC-500.

c. *Local Employment in Construction Contracts.* Occasionally, efforts are made by State or local governments to have FAA limit employment on construction projects to local residents or firms. Such a restriction has been held to be improper, and should not be used in FAA contracts (reference Washington State Supreme Court case Laborers Local Union No. 374 v. Felton Construction Co., Nov. 24, 1982, and 42 Comp. Gen. 1, B-198952, 81-1 CPD 467). FAA recognizes that Tribal Employment Rights Ordinances (TERO) which affects projects on or near certain Indian reservations may have an effect on contractor labor. FAA should inform offerors of the existence of a TERO in the screening information request (SIR).

d. *Domestic Materials.* The Buy American Act applies to construction, alteration, and repair contracts performed in the United States. It requires contractors to use domestic materials, except under specific circumstances. Also, the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 require FAA to use domestic steel and manufactured products, unless an exception applies. (See AMS Procurement Guidance T3.6.4)

5 Design-Build Revised 1/2016

a. *General.* Design-build is a contracting technique that allows a single procurement for both design and construction of a project. Design-build allows the contractor flexibility, to the extent allowable or reasonable, for innovation in design, materials, and construction methods utilized in a construction project.

b. *Considerations for Using Design-Build.*

(1) When planning a design-build, the procurement team (Contracting Officer (CO), program official, legal counsel and others supporting a project) should consider the following factors:

- (a) Extent to which requirements are defined;
- (b) Time constraints;
- (c) The potential for delays, modifications, and scope changes;
- (d) Potential regulatory or environmental issues;
- (e) Construction issues, including differing site conditions and schedules;
- (f) Risks to FAA, including potential liabilities and meeting stipulated performance standards;
- (g) Availability and type of funding, including funding issues that may arise from a large design-build project that covers multiple fiscal years; and
- (h) Availability of qualified design-build contractors.

(2) When considering design-build, the procurement team must judge who is in the best position, FAA or a contractor, to manage and control potential issues or risks for a particular project. Under a design-build, the contractor assumes the greater responsibility and risk. Claims for design errors or delays are not allowed and the potential for other types of claims are greatly reduced.

c. *Design-Build Source Selection.*

(1) *Two-Phase SIR.* While a CO may choose to award a contract based on one SIR requiring a single offer (that includes an offeror's technical and pricing information), the CO may instead issue a two-phase SIR that allows the CO to screen technical proposals and down-select offerors prior to requesting a price proposal.

(a) Phase one involves the request for and evaluation of technical proposals from offerors, and no pricing is involved. The goal is to determine the acceptability of the technical proposals prior to the submission of pricing. Technical information that may be requested from offerors includes, but is not limited to:

- (i) Technical capabilities;
- (ii) Experience/past performance (such as experience in a given field or industry or on-airport experience);
- (iii) Engineering approach;
- (iv) Special manufacturing processes; and
- (v) Joint experience of design and construction management teams.

(b) Phase two involves the submission of pricing proposals by only those offerors determined to be technically acceptable in step one. Trade-offs in phase 2 are allowable.

(c) Factors the CO should consider for using a two-phase SIR include:

- (i) Specifications or descriptions are not definite or complete;
- (ii) Definite criteria exist for the evaluation of technical proposals, experience, or past performance;
- (iii) Two or more sources are expected; and
- (iv) FAA personnel (i.e. CO, engineers, etc.) are available to evaluate/manage a two-phase SIR.

(2) *Cost-Reimbursement Contract*. When a design-build project involves numerous uncertainties or the project has yet to be fully developed, a cost-reimbursement, rather than a fixed-price, contract may be appropriate. Rare situations that may warrant a cost-reimbursement design-build contract are:

- (a) Highly technical or next generation projects that do not have an effective design benchmark; and
- (b) Projects with multiple uncertainties, for example:
 - (i) Site conditions or locations that create unique and unplanned impacts to the project;

(ii) New technology that may create integration issues when introduced to current systems; and

(iii) Hazardous waste remediation where the scope of the clean-up cannot be completely defined.

(3) *Design Competition.* Design-build may include “design competition” as a basis for selecting a vendor for the project. FAA provides general design requirements or constraints and offerors prepare a preliminary design or specification for FAA evaluation. Depending on the scope of the project and availability of funding, FAA may authorize a fixed payment to compensate offerors for work done during the design competition.

6 Reserved Revised 10/2014

7 Planning and Pre-Solicitation Revised 7/2016

a. *Type of Contract and Pricing.* Generally, construction should be acquired on a firm-fixed price basis. Pricing may be on a lump sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit price basis (when a unit price is paid for a specified quantity of work units), or using a combination of the two.

b. *Options.* If in FAA’s best interest, COs may include options in construction contracts. Solicitations must state whether options will or will not be evaluated for purposes of award. Appropriate use of options in construction contracts includes:

(1) Additional work is anticipated but sufficient funds are not anticipated or available prior to the time of award, and it would not be in FAA’s best interest to award a separate contract or have another contractor work on the site; and

(2) If fixed building equipment is installed under the contract and it would be in FAA’s best interest to have the installer maintain and service the equipment during the warranty period.

c. *Property.* Before issuing the solicitation, the CO must document if materials for the project will be Government Furnished Property (GFP) or furnished by the contractor. The requiring organization prepares the GFP list, and the list must be included in the solicitation to ensure that any proposals received account for the source of project material.

d. *Insurance.* If in the best interest of FAA, the CO may require the contractor to carry insurance, especially if the work is to be done on an FAA facility or FAA property is involved. The CO must ensure the contractor submits all required insurance documents and the documents are acceptable before issuing the notice to proceed (NTP). An original copy of the proof of insurance must be retained in the contract file.

e. *Bonds.* Per the Miller Act (40 U.S.C.A Section 3131), performance and payment bonds are required for all construction contracts that exceed \$150,000. The amount of the bonds should reflect the minimum amount required to protect FAA interests. An original copy of any bond must be retained in the contract file. The CO will not issue the NTP until required bonds have been received.

f. *Source Evaluation Plan.* The CO's method of selection and evaluation criteria must be documented in the contract file. This may be done by establishing an evaluation plan as described under Complex and Noncommercial Source Selection (See AMS 3.2.2.3).

g. *Basis for Award.* Award may be based on the lowest price, technically acceptable offer when best value is expected to result from a technically acceptable proposal with the lowest price.

(1) All evaluation factors (non-cost) that will be used to determine if an offeror is technically acceptable will be set forth in the solicitation.

(2) The solicitation must specify that award will be made to the lowest priced offer meeting or exceeding the acceptability standards for non-cost factors.

(3) Tradeoffs are not permitted.

(4) Non-cost factors are used to evaluate acceptability and not to rank proposals.

(5) Discussions regarding proposals may occur.

h. *Differing Site Conditions.* The purpose of the "Differing Site Conditions" clause is to encourage offerors to limit inclusion of contingency costs in their offers for conditions that are not reasonably foreseeable. The clause will also assist FAA and the contractor in complying with the Archaeological Resources Protection Act of 1979 (36 CFR 1214).

i. *Construction Moratoriums.* When in the planning stages of a construction project, the procurement team must consider any impacts construction moratoriums may have upon the project and its related schedule.

j. *Disclosure of the Size of Construction Projects.* When the estimated price of the proposed construction project is \$150,000 or more, public announcement (if required) and SIRs should state the size of the requirements in terms of a physical description of the project and the estimated price. The estimated price may be described in a price range as determined by the procurement team or in terms of one of the following price ranges:

(1) Between \$50,000 and \$100,000;

(2) Between \$100,000 and \$250,000;

(3) Between \$250,000 and \$500,000;

- (4) Between \$500,000 and \$1,000,000;
- (5) Between \$1,000,000 and \$5,000,000;
- (6) Between \$5,000,000 and \$10,000,000; or
- (7) More than \$10,000,000

k. *Environment and Conservation.*

- (1) If a CO becomes aware of contractor noncompliance with environmental standards (to include clean air and water standards), the CO is to notify FAA officials and the Environmental Protection Agency (EPA).
- (2) The CO has a responsibility to help coordinate and ensure that any hazardous materials present or introduced during the performance of a contract are appropriately managed and tracked.
- (3) Products used for a project must adhere to agency goals established in FAA's Green Procurement Plan (GPP), and each contract must include GPP compliance provisions to ensure the contractor understands applicable FAA energy conservation and recovered material, or recycled content product, standards.
- (4) Refer to AMS Procurement Guidance T3.6.3 for additional guidance on the protection of the environment and proper conservation during construction contracts, and AMS Real Estate Guidance 2.4.16.3 for information regarding the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.

l. *Subcontracting Plan.* When a project is expected to exceed \$1 million is not an 8(a), SDVOSB, or small business set-aside, and subcontracting opportunities exist, the CO should include provisions for a small business subcontracting plan in the solicitation.

m. *Patent and Data Rights.* The CO should ensure appropriate patent and data rights clauses are included in the solicitation when the project is for other than standard types of construction and may involve unique products, materials, or processes.

n. *Value Engineering.* Value engineering provisions in the solicitation may be appropriate to allow the contractor to initiate changes in design, specifications, or other requirements and share in any savings that may result.

8 Pre-Award Revised 1/2016

a. *Public Announcement.* All procurements, including construction, over \$150,000 must be publicly announced on the Internet or through other means. For example, the announcement could be placed on the FAA Contracting Opportunities website.

b. *Inspection of Site and Examination of Data.*

(1) The procurement team should make appropriate arrangements for prospective offerors to inspect the work site prior to submission of offers. The procurement team should also allow prospective offerors the opportunity to examine data in the possession of FAA that may provide information concerning the performance of the work, such as boring samples, original boring logs, geology reports, and record and plans of previous construction. The SIR should notify offerors of the time(s) and place(s) for the site inspection and data examination, as well as the name and telephone number of the contact point at the facility. The procurement team should keep a record of the identity and affiliation of all offeror representatives who inspect the site or examine FAA site information.

(2) Significant site information should be made available to all offerors, including information regarding any utilities to be furnished during construction. FAA personnel must not provide information that conflicts with the provisions of the SIR.

(3) The CO must notify all potential offerors of any clarification or correction to the SIR package.

c. *Past Performance.* Past performance can aid in selecting the contractor who is most likely to perform satisfactorily. Key to the successful use of past performance in the screening process is establishing a clear relationship between the statement of work (SOW), the instructions to offerors, and the evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

d. *Pre-Award Survey.* COs may use pre-award surveys to aid in gathering past performance information. The pre-award survey can give the CO a sense of how the contractor will perform, especially if concentrating on projects that are similar in type and scope to the one being solicited. The scope of the pre-award survey is at the discretion of the CO as it may be affected by the size and complexity of the solicitation and project.

9 Post-Award Revised 10/2018

a. *Assignment of Inspection and Contract Administration.*

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Representatives (COR). These personnel are normally present at the job site each day, and are in the best position to observe day-to-day activities and performance. CORs on site perform such delegated duties as daily performance

inspections, Department of Labor wage rate interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The duties of these individuals must be clearly annotated by the CO in a COR Delegation Form. A copy of the COR Delegation Form is provided to the COR and the contractor. See AMS Procurement Forms for the COR Delegation Form.

(2) Only the CO, or person delegated specific authority to execute contract modifications, may authorize a change to the original contract.

b. *Notice to Proceed (NTP)*. The NTP is issued to give notice to the contractor when on-site work can be started, when the project is to be completed based upon the performance time in the contract, and any other information deemed pertinent by the CO. Prior to its issuance, the CO must ensure all required submittals have been delivered to and approved by the FAA, that all required insurance and bonding documents have been submitted and are acceptable, and other coordination or applicable documentation has been completed.

c. *Preconstruction Conference*. The CO may conduct a preconstruction conference (to discuss matters such as applicable labor standards, the authority of various personnel, safety, and environmental considerations) prior to the start of a construction or demolition contract. Preconstruction conferences are not a requirement for each project. When deciding on a conference, the CO should weigh the administrative costs, time, and possible travel expenses for all parties involved, against the complexity of the requirement, the impact of the requirement on entities involved with the site, and the past performance and technical knowledge of the contractor. For a preconstruction conference agenda and checklist, see AMS Procurement Forms.

d. *Use and Possession Prior to Completion*. Beneficial occupancy occurs when the Government takes possession of, or puts to use, a completed or partially completed part of the work. It does not constitute acceptance of the facility as constructed. The clause "Use and Possession Prior to Completion" addresses some of the issues associated with beneficial occupancy. If it is foreseen prior to contract inception that beneficial occupancy will become an issue, or if it becomes an issue during contract performance, the CO should consider negotiating contract terms which cover relevant issues for that contract, e.g., date of warranty, builder's risk coverage, coordination with the contractor, etc. Legal counsel should be consulted on the legal ramifications of beneficial occupancy. Phased (partial) acceptance can be used as an alternative to beneficial occupancy, if the need can be identified sufficiently in advance to structure the contract accordingly, and it is determined in the best interests of the parties.

e. *Airport Coordination*. Local airport authorities and/or other Federal agencies may have requirements and regulations outside of those imposed by the FAA that a contractor is required to adhere to when completing a construction project on an airport. These additional requirements may include additional security, insurance, and safety requirements. It is the responsibility of the contractor to coordinate with other authorities or agencies prior to performance to ensure they satisfy any applicable local regulations.

f. *Property Protection.* The FAA must ensure that the contractor understands that throughout the performance of the contract, care must be taken by the contractor to protect FAA and/or other property that may be affected during construction.

g. *Prime Contractor Performance.* The use of subcontractors by a prime contractor during the performance of a construction contract is inevitable and at times presents a savings to the FAA through the contract. For example, the prime contractor may lack the internal capability to provide specific trades required to meet all the terms and conditions of the contract. The CO should assure adequate interest in and supervision of work involved in projects. The contractor shall be required to perform a significant part of the contract with its own work force and express this requirement in terms of a percentage of the total work, for example:

(1) The prime contractor must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

(2) Construction by special trade contractors: The prime contractor must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

h. *Contractor's Daily Log.* For any construction contract greater than \$10,000, the contractor is required to submit to the CO a "Daily Log" of activity on the site. The logs must include the workers used by classification, construction equipment moved on and off the site, materials and equipment delivered to the site, inspections and tests performed, and total cumulative hours worked.

i. *Suspension of Work.* The COR should notify the CO when a suspension order is necessary to prevent the contractor from proceeding with work that will have to be removed or changed. Only the CO can order a suspension of work; when possible, the CO should use partial, rather than, total suspension orders.

j. *Warranties.* The CO should obtain information about any warranties from the contractor. This information should include effective dates and names, addresses, and contacts. A list of warranty or guarantee expiration dates is made and retained, and copies are provided to the user.

k. *Asbestos NESHAP Compliance.* The contractor must comply with all federal, state, and local requirements regarding building demolition and/or the removal of any asbestos in accordance with the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). AMS clause 3.6.3-24 "Asbestos NESHAP Compliance" applies in such situations.

10 Contract Acceptance Inspection (CAI) Revised 4/2012

a. Definitions:

(1) *Contract Acceptance Inspection (CAI):* Formal inspection by the Project Implementer of a constructed facility when work under the contract is considered to be substantially

complete. The CAI is typically requested by the prime contractor and coordinated with the Project Implementer.

(2) *Joint Acceptance Inspection (JAI)*: The JAI is an activity to gain consensus of all involved groups that projects for facility, system, or equipment establishment, improvement, or relocation are completed in accordance with national criteria and that the facility is capable of performing its advertised functions.

(3) *Project Implementer (PI)*: The PI is the FAA organization implementing the project, although funding may be provided by other organizations. In most cases this will be ATO Technical Operations (ATO-W) Engineering Services.

b. *Contract Acceptance Inspection (CAI)*. The Project Implementer, usually a Contracting Officer's Representative (COR) appointed in ATO-W Engineering Services and delegated by the Contracting Officer (CO), is responsible for formally inspecting a constructed facility from the construction or equipment installation contractor and recommending acceptance or non- acceptance to the CO. This inspection is typically conducted before the beginning of JAI.

c. The CO's responsibility is to formally accept the constructed facility. The CO must notify the contractor when a CAI has been completed and work under a contract has been either accepted or rejected. This should be done through the CAI letter (see Procurement Forms) that describes:

(1) What is being accepted from the contractor (item and description);

(2) The acceptance date of the item; and

(3) Any outstanding commitments the contractor has for the item (e.g. punch list items, warranties, etc.).

d. All CAI letters and associated information should be filed in the official contract file. This documentation is used to support completion of the contract, and to provide data to properly capitalized items.

11 Contract Completion/Closeout Revised 8/2009

a. A construction or installation project must be considered physically and financially complete and funds deobligated, when necessary, within one year after the final acceptance and inspection (e.g., CAI) has been completed.

b. Prior to final payment, the CO must ensure:

(1) Receipt of all required warranty documentation;

(2) Return of issued ID media (Badges, etc.);

- (3) Receipt of any state tax exemption certificates or completion statements as required from the contractor;
- (4) Certification that all government property has either been utilized in the performance of the contract or returned to the FAA;
- (5) Confirmation from the requiring organization that the job has been completed as contracted;
- (6) Receipt of any other applicable items required from the contractor that are unique to the procurement; and
- (7) Receipt of a final release of claims on file signed by the contractor for the final amount of the contract.

B Clauses Added 7/2007

[view contract clauses](#)

C Forms Added 7/2007

[view procurement forms](#)

Section Revised:

3.10.1 D 10 – Common Modification Authorities for Supplies, Services, or Construction

Procurement Guidance - (~~9/2020~~ 10/2020)

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

- 1 Contract Management Revised 9/2020
- 2 Basic Responsibility for Contract Administration Revised 7/2012
- 3 Assignment of Contracting Officer's Representative Revised 9/2020
- 4 Communications with Vendors Revised 9/2020
- 5 Contract Modifications Revised 9/2020
- 6 Novations and Change-of-Name Agreements Revised 9/2020
- 7 Contract Files Revised 9/2020

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

- 1 Use of Government Excess Equipment Revised 9/2020
- 2 Suspension and Stop-Work Orders Revised 9/2020
- 3 Conversion of FAR Contracts to AMS Revised 9/2020
- 4 Contract Closeout Revised 9/2020
- 5 Final Indirect Cost Rates Revised 9/2020
- 6 Contract Audit Revised 9/2020
- 7 Bankruptcy Revised 9/2020
- 8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020
- 9 Contractor Performance Documentation and Maintenance Revised 9/2020

C Special Contract Administration Actions for Real Property Added 9/2020

- 1 Real Estate Asset Management Added 9/2020
- 2 Inspection and Acceptance Added 9/2020

D Clauses Revised 9/2020

E Forms Revised 9/2020

F Appendices Revised 9/2020

- 1 Appendix – Reserved Revised 7/2014
- 2 Appendix - Reserved Revised 7/2014
- 3 Appendix - When Should a COR be Appointed Revised 9/2020
- 4 Appendix - Stop-Work Order Revised 4/2011
- 5 Appendix - Novation Agreement Revised 4/2011
- 6 Appendix - Change of Name Agreement Revised 4/2011
- 7 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 9/2020
- 8 Appendix - Contract File Completion Statement Revised 4/2011
- 9 Appendix – Reserved Revised 7/2014
- 10 Appendix - Common Modification Authorities for Supplies, Services, or Construction Revised ~~9/2020~~ 10/2020
- 11 FAA CPARS Guide Revised 10/2017

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

1 Contract Management Revised 9/2020

- a. Contracts are managed to ensure that FAA receives a specific product or service or real property in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in the FAA's best interest. If such a situation arises, the Contracting Officer (CO) documents the circumstances. When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence of legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.
- b. The Appendices to this guidance includes memoranda, letters, and agreements used for contract administration actions described in this section. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.
- c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement Form Templates.

2 Basic Responsibility for Contract Administration Revised 7/2012

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

3 Assignment of Contracting Officer's Representative Revised 9/2020

- a. Designating a Contracting Officer's Representative (COR). The CO may designate an individual to act as his/her representative to facilitate contract administration. A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work or requirements; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor or vendor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments. Requiring organizations should ensure that the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a representative by execution of a COR Delegation Form (see AMS Procurement Forms for COR Delegation or Real Property Templates and Samples for COR Delegation For Real Property) describing specific delegated authority and responsibilities. The Form is provided by the CO to the COR at the time the assignment is made or changed in any way. The COR must sign the Form in acknowledgement. See the AMS COR Handbook for additional information about COR duties.
- b. Basic Training and Biennial Refresher Training Requirements. See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.
 - (1) The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a

three level certification program. Training and certification for Levels I and II will be completed prior to appointment. Level III certification must be completed no later than six months after appointment. Training may be completed online or in a classroom. Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

(2) The COR must provide documentation showing certification or a waiver to the CO.

c. Authority of the Contracting Officer's Representative. A duly-assigned COR is authorized to perform the actions delegated by the CO in a COR Delegation Form. When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in this Form. One COR Delegation Form for all situations may not be appropriate because contractual situations are distinct and have varying needs. The Form may be modified to reflect the specific needs of the contract and CO. Depending on the scope, duration, complexity and aggregate total estimated potential value of the contract, a COR may not be required.

d. Changing the Contracting Officer's Representative. To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both actions are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

e. Notifying the Contractor. The CO furnishes copies of the COR Delegation Form and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

4 Communications with Vendors Revised 9/2020

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. Post award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. Communication with the vendor and internal stakeholders (i.e. legal and/or service organization) is particularly essential when the following occur: at the beginning of contract performance; whenever either party detects a problem; and before and after significant milestones. However, communication between FAA and the contractor should occur routinely even when no problems may be encountered.

5 Contract Modifications Revised 9/2020

a. Contract Modifications for Products, Services, and Construction

(1) *Authority.* Only a CO or person delegated specific authority to execute contract modifications for products, services (including real property related services), and construction contracts, may execute contract modifications.

(2) *Ceiling-Priced Modifications.*

(a) Contract modifications should be priced before execution, if this can be done without

adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

- 1) All requirements for performance or delivery;
 - 2) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and
 - 3) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling-priced modification or before completion of 40% of the work to be performed, whichever occurs first.
- (b) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.
- (3) *Types of Contract Modifications.* Contract modifications fall into the following categories (see the Appendix to this guidance section for a detailed description of the types of modifications and associated authorities for modifying contracts):
- (a) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement, within a reasonable period of time, in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:
 - 1) Make equitable adjustments when necessary;
 - 2) Definitize quick-response contracts;
 - 3) Reflect other agreements of the parties which modify the terms of contracts; or
 - 4) Make changes requested by the contractor.
 - (b) *Unilateral.* A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:
 - 1) Make administrative changes;

2) Issue changes under the Changes clause; or

3) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

(4) *Extension of Contracts.*

(a) *Before Expiration.* The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration.* The CO must **not** extend a contract after it has expired.

b. Supplemental Agreements

(1) *Authority.* Only a CO or person delegated specific authority may execute supplemental agreements for real property contracts. Real property contracts include but are not limited to leases, easements, memorandum of agreements, permits, and licenses.

(2) *Supplemental Agreement Requirements.*

(a) All modifications to the existing requirements must be within the scope of the real property contract (e.g., the requirements the lessor has to perform on the lease).

(b) For leases, no supplemental agreement may extend the term beyond twenty (20) years unless approved by the Office of Chief Counsel, Field Operations, Acquisition and Real Estate. This restriction does not apply to no-cost leases.

(3) *Mandatory Use of Supplemental Agreements.* The CO **must** use a supplemental agreement for modifications to existing real property contract requirements to:

(a) Document changes in ownership;

(b) Exercise an option provided in the lease, e.g. renewal, early termination, etc.;

(c) Extend a lease, easement, or other real property interest prior to expiration; and

(d) Change or modify any aspect of the real property contract.

(4) *Types of Supplemental Agreements.* Supplemental agreements fall into the following categories:

(a) *Unilateral.* A unilateral supplemental agreement is executed only by the CO, and consent of the vendor is not required. The following are examples where unilateral supplemental agreements are appropriate:

- 1) Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease ;
- 2) Exercising a termination right in accordance with the cancellation clause in a contract for a real property interest;
- 3) To document a change in rent previously agreed to in the real property contract that requires an event in the future in order to determine the rent change, e.g. the operating cost escalation clause or tax adjustment clause; or
- 4) To document a change in ownership where the CO has supporting documentation in the real estate file provided by the new owner.

(b) *Bilateral.* A bilateral supplemental agreement is one that must be signed by the CO and the vendor. Any changes to the contract not previously negotiated and agreed to in the contract require a bilateral supplemental agreement. The following are examples where bilateral supplemental agreements are required:

- 1) To identify or change the rent commencement date;
- 2) To modify square footage and associated rent based on actual measurement upon acceptance of the space for FAA occupancy;
- 3) Extending the lease term; and
- 4) Terminating a lease that does not contain termination rights.

6 Novations and Change-of-Name Agreements Revised 9/2020

a. Novation.

(1) Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.

(2) When in its best interest, the FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:

- (a) All of the contractor's assets; or

(b) The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to

(i) Sale of the contractor's assets with a provision for assuming liabilities;

(ii) Transfer of the contractor's assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(3) A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.

(4) *Contractor (Transferor) Responsibilities*. Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of the FAA and should include:

(a) Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;

(b) One copy each, as applicable, of the following:

(i) The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;

(ii) A list of all affected contracts between the transferor and the FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the

(A) Contract number and type;

(B) Name and address of the contracting office;

(C) Total dollar value, as amended; and

(D) Approximate remaining unpaid balance;

(iii) Evidence of the transferee's capability to perform;

(c) Any other relevant information requested by the CO;

(d) One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:

(i) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(ii) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(iii) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(iv) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts;

(v) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

- (vi) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;
 - (vii) Evidence that any security clearance requirements have been met;
 - (viii) The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.
- (5) The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.
- (6) *CO Responsibilities.* The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of the FAA.
- (a) *Novations Involving More Than One Contract.* When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.
 - (b) *Coordination with Other Executive Agencies.* The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.
 - (c) *Evaluating the Novation Request.* The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor's ability to perform including:
 - (i) Contractor submissions under (5) above;
 - (ii) Information provided by other contracting offices;
 - (iii) Information indicative of the successor's responsibility such as debarment and suspension information;
 - (iv) National Institute of Health's Past Performance Database;
 - (v) Organizational conflict of interest;
 - (vi) Any other information that reflects the successor's ability to perform the contract.
 - (d) *Conflict of Interest (COI).* If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of the FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.
 - (e) Coordinate the action with legal counsel to assure legal sufficiency.
 - (f) *CO's Decision.*
 - (i) *Rejecting the Novation Request.* If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.
 - (ii) *Executing the Novation.* If the CO approves the novation, he/she should
 - (A) Prepare and sign a written contract modification for each affected contract;
 - (B) Incorporate a copy of the agreement into the contract modification;
 - (C) Place the original contract modification in the official contract file;

(D) Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

(7) *Content of the Novation Agreement.* Appendix 5 to this guidance is a novation agreement that provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases but should include the following provisions:

- (a) Successor contractor/transferee Responsibilities;
- (b) The transferee assumes all the transferor's obligations under the contract;
- (c) The transferor waives all rights under the contract against the Government;
- (d) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
- (e) A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(8) Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation agreement.

b. *Change of Name Agreements.*

A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

(1) *Contractor's Responsibilities.* The contractor should submit the following to the CO:

- (a) A written request to the CO to change the name;
- (b) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;
- (c) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;
- (d) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

(2) *CO's Responsibilities.* The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from [enter contractor's previous name] to that shown above. This change is made at the request of the Contractor received on [insert date]."

(3) A format for a Change of Name agreement is in Appendix 6.

7 Contract Files Revised 9/2020

a. Contract Files for Products, Services, or Construction.

- (1) The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a complete history of the transaction and:
 - (a) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;
 - (b) Support actions taken;
 - (c) Provide information for reviews and investigations; and
 - (d) Furnish essential facts in the event of litigation or Congressional inquiries.
- (2) A contract file should consist of the following:
 - (a) Contracting office documentation of the acquisition, basis for award, assignment of contract administration if applicable (including payment responsibilities), and any subsequent actions taken by the contracting office. ;
 - (b) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;
 - (c) Government-furnished/contractor-acquired property file; and
 - (d) Paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.
- (3) The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.
- (4) A guide describing creation and maintenance of contract administration files is in Appendix 7 to this Guidance.
- (5) File content checklists for contracts, purchase orders/FSS orders, blanket purchase agreements, and agreements are in the Procurement Form Templates area of FAST. These checklists will assist in organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:
 - (a) Contract Organization and File Content List
 - (b) Contract Organization and File Content List--Modification

(c) Purchase Order/GSA/FSS Order File Checklist*

(d) Blanket Purchase Agreement (BPA) File Checklist

(e) Interagency Agreement File Checklist

* Note: Checklist not required for orders with a total value of less than \$10,000.

b. Contract Files for Real Property.

(1) Documentation to the Contract File

Sufficient documentation must be developed to explain and to justify the real property acquisition action taken. COs must use the appropriate checklists to ensure the adequacy of contract clauses and to ensure required documentation is in the file. COs must use a 6 part folder for all real property acquisition files.

(2) Life Safety Compliance/Seismic

Life Safety Compliance and/or Seismic Certifications must be included in the contract file. The CO must ensure that the original signed certification(s) or applicable update is placed in any new or succeeding contract file and that a copy is kept in the previous contract file.

(3) Utility Documentation

- (a) The CO must use the utility checklist when assembling the utility file. The checklist must be filled in completely.
- (b) If a required item is listed in the checklist, but is not applicable, the CO must place a N/A and a note in the file stating why it is not applicable.
- (c) The CO establishes and maintains hard copy records of the utility contract, purchase order or state utility contract.
- (d) The permanent file for each facility must remain active for the life of the facility and contain all supporting documents pertaining to the utility contract activity.
- (e) COs must use a 6 part folder system for all their utility acquisition files.

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

1 Use of Government Excess Equipment Revised 9/2020

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

2 Suspension and Stop-Work Orders Revised 9/2020

a. General.

- (1) Suspensions of work or stop-work orders are tools available to the Government to interrupt the contractor's work in appropriate situations. (See "Stop Work Order" example in the Appendix to this Guidance). The CO should assure that the appropriate clauses governing stop work and suspensions of work are in all contracts.
- (2) The CO's suspension or stop-work order should be in writing and include information required by the clauses, such as:
 - (a) A description of the work to be suspended/stopped;
 - (b) Instructions concerning the contractor's issuance of further orders for materials or services;
 - (c) Guidance to the contractor on action to be taken on any affected subcontracts;
and
 - (d) Other suggestions for minimizing the contractor's costs.
- (3) If either the suspension or stop-work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop-work order, or continue the suspension or stop-work order while the issues are being resolved.

b. Suspensions.

- (1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:
 - (a) Delays caused by waiting for a decision from FAA;
 - (b) Weather-related reasons;
 - (c) Technological advancement;
 - (d) Production or engineering breakthroughs;

(e) Realignment of FAA programs or objectives;

(f) Public safety concerns;

(g) Emergency situations or other urgent conditions;

(h) Differing site conditions; or

(i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

(2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

(a) Suspend work pending discussion with the program official;

(b) Notify the contractor orally and follow-up immediately with a written notice.

c. *Stop-work Orders*. Stop-work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

3 Conversion of FAR Contracts to AMS Revised 9/2020

a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:

(1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);

(2) A significant term or delivery schedule remaining;

(3) Potential of new work being added to the existing contract; or

(4) One or more options.

b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

4 Contract Closeout Revised 9/2020

a. *Background.* Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. Timely closeout deobligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.

b. *Definitions.*

- (1) A contract is considered to be physically complete when:
 - (a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
 - (b) The contractor has performed all services and the Government has accepted the services;
 - (c) All option provisions, if any, have expired; and
 - (d) The Government has given the contractor a notice of complete contract termination.
- (2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered to be physically complete when:
 - (a) Property or services have been received within the terms of the contract;
 - (b) Final payment has been made to the contractor; and
 - (c) The recipient acknowledges the acceptance of the goods/services in Procurement System (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. *Time Frames.* Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist" or the closeout section of the "Purchase Order/GSA/FSS Order File Checklist" (See Procurement Forms in FAST). Closeout in Procurement System is required for all contracts, purchase orders, and delivery/task orders.

- (1) Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.
- (2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).
- (3) Contract files for contracts requiring settlement of indirect cost rates must be closed out within 36 months of the month in which the CO receives evidence of physical completion.
- (4) Contract files for all other contracts must be closed out within 20 months of the month in which the CO receives evidence of physical completion.

(5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. *Preparation for Closeout.* To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist." Following are examples of actions the CO may be able to take before the contract is physically complete:

- (1) Ensure that the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the Office of Personnel Security's (AXP) list.
- (2) Ensure that all information in Procurement System is current and correct.
- (3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).
- (4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.
- (5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. *Closeout Procedures.* When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify that the documents and activities included in the "Contract Closeout Checklist" have been received or are complete. After completion of the "Contract Closeout Checklist" and notification of final payment from Accounts Payable, the CO must complete and sign a "Contract File Completion Statement" (Appendix 11). For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "Contract Closeout Checklist" and "Contract File Completion Statement." To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) Send a memorandum to the program official to confirm contract completion.
- (3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (See Appendix 12 for

memorandum). The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify AXP of all employee transfers in order to retain such contractor accounts.

(4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.

(5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).

(6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:

(a) Final voucher.

(b) Confirmation of settlement of subcontracts.

(c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.

(d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).

(e) Patent and royalty reports.

(f) Contractor's release.

(g) Contractor's assignment of refunds, rebates, credits, and other amounts.

(h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to AXP.

(7) Review and approval of the final voucher should include:

(a) Verification that all contractual requirements have been satisfied.

(b) Completion of any fee adjustments.

(c) Verification that contractual funding limitations have not been exceeded.

(d) Identification of any offsets applied.

(e) Verification of accuracy of Contractor Release and Assignment.

(f) Verification that all previous Contractor vouchers have been paid.

(g) Approval for payment with signature and date.

(h) Deobligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.

(9) Closeout in Procurement System.

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

(a) The contract is physically complete;

(b) The amount of unsettled indirect costs is not more than \$5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

(c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

(a) Ensure adequate rationale for the decision is included in the file;

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;

(e) Establish final indirect cost rates using one of the following rates:

(i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. Deobligation of Funds Prior to Closeout.

(1) *Actions Before Deobligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may deobligate unused funding prior to the finalization of the contractor's final cost rates. Prior to deobligating unused funding, the CO must:

(a) Confirm that contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be deobligated (a purchase request requesting the deobligation of funds satisfies this requirement).

(2) *Reconciliation.* After establishment of the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay to the FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

5 Final Indirect Cost Rates Revised 9/2020

a. *Cognizant Federal Agency.* A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b. *Billing Rates.*

(1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.

(2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.

(3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant

submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.

(5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. Reimbursing Indirect Costs. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. Final Indirect Cost Rates.

(1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. The establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.

(2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.

(5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:

- (a) Pending closeout of subcontracts awaiting Government audit.
- (b) Pending contractor, subcontractor, or Government claims.
- (c) Delays in the disposition of Government property.
- (d) Delays in contract reconciliation.
- (e) Any other pertinent factors.

(6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.

(7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. CO Determination Procedure.

(1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

- (a) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- (c) Educational institutions
- (d) State and local governments
- (e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and

negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

(a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and

(b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

(a) Conducts negotiations;

(b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and

(c) Prepares, signs, and places in the contractor general file:

(i) The disposition of significant matters in the advisory audit report;

(ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.

(vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

(a) Business units of a multidivisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.

(d) Educational institutions.

(e) State and local governments.

(f) Nonprofit organizations other than educational and state and local governments

(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(b) The administrative cost of CO determination would exceed the expected benefits.

(c) The business unit does not have a history of disputes and there are few cost problems.

(d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

(a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) Upon receipt of a proposal, the auditor:

(i) Audits the proposal and seeks agreement on indirect costs with the contractor;

(ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and

(iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. Certification.

(1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.

(a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

(1) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization; and

(2) A state or local government, educational institution, or nonprofit organization subject to OMB Guidance "Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”);

(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor’s certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

6 Contract Audit Revised 9/2020

a. Contract Audit - Post Award.

(1) The auditor is responsible for:

(a) Submitting information and advice to the requesting activity, based on the auditor’s analysis of the contractor’s financial and accounting records or other related data as to the acceptability of the contractor’s incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor’s cost control system.

(c) Performing other analyses and reviews that require access to the contractor’s financial and accounting records supporting proposed and incurred costs.

(2) *Audit Cognizance.* Normally, DCAA is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

(3) *Assigning Audit Services.* COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit agency. DCAA’s audit office locator is online at <http://www.dcaa.mil>. The audit request should include a suspense date and should identify any information needed by the CO. The responsible audit

agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

7 Bankruptcy Revised 9/2020

a. *General.* The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.

b. *Contractor Financial Difficulties.* When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.

- (1) Determine whether the contractor is performing in a timely manner and making satisfactory progress.
- (2) Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.
- (3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.
- (4) Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.
- (5) Notify the bonding company, if appropriate.

c. *Notification of Bankruptcy.* Upon receipt of a contractor notification of bankruptcy, as required by AMS clause 3.10.1-7, "Bankruptcy," the CO must:

- (1) Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.
- (2) Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.
- (3) Take actions necessary to protect FAA's rights and interests, including Government property.
- (4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020

- a. *Scope.* The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).
- b. *Applicability.* This reporting requirement applies to all contracts with a value of \$25,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under \$300,000. Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.
- c. *Review.* The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14. Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. The reports may be reviewed at <http://www.fsrs.gov>.
- d. *Failure to Comply.* If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. If the contractor still does not comply, appropriate contractual remedies should be taken. In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.
- e. When COs report contracting data to the Federal Procurement Data System (FPDS), certain data will then pre-populate from FPDS to assist the contractor complete and submit the reports.

9 Contractor Performance Documentation and Maintenance Revised 9/2020

- a. This section provides policies and establishes responsibilities for recording and maintaining contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.
- b. Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's record of meeting small business subcontracting objectives; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

c. Past performance evaluations must be prepared as specified in the FAA CPARS Guide, Appendix 11. Generally reporting is done on an annual basis and should be completed no later than sixty (60) days after the end of the applicable reporting period. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

d.

(1) Except as provided in this paragraph (d), FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds.

- (i) Services exceeding \$5,000,000
- (ii) Supply contracts exceeding \$10,000,000
- (iii) Construction contracts exceeding \$10,000,000
- (iv) Research & Development contracts exceeding \$5,000,000

(2) An evaluation of contractor performance is required for each order that exceeds the above specified thresholds placed against a Federal Supply Schedule contract, a task order contract or a delivery order contract, or any other ordering Agreement. Evaluations of multiple orders under an ordering contract or agreement may be combined in accordance with the guidance provided in the FAA CPARS Guide.

(3) Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require evaluations.

(4) An evaluation may be performed for any contract or order that does not meet the above thresholds.

e. Roles and Responsibilities. Responsibility for completing CPARS evaluations rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR are responsible for entering the ratings and narratives for each evaluation performed.

f. Non-Disclosure. The completed CPARS evaluation must not be made available to anyone other than Government personnel and the contractor whose performance is being evaluated.

Agency support contractors must not have access to CPARS evaluations of other contractors.

C Special Contract Administration Actions for Real Property Added 9/2020

1 Real Estate Asset Management Added 9/2020

All contract documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been executed. The contract must be uploaded to the real property asset management system, and attached to the respective lease number.

2 Inspection and Acceptance of Space Added 9/2020

- a. *Inspection.* The CO, or designated representative, should inspect the real property sufficiently in advance of the occupancy date to ensure it is acceptable and ready for use. The vendor must provide a valid occupancy permit unless the local jurisdiction does not issue occupancy permits, in which case a certified copy of the FAA Safety and Environmental Checklist will suffice.
- b. *Acceptance.* Acceptance must be provided in writing. Any discrepancies or unfinished punch list items must be documented in the contract file.
- c. *Deficiencies.* All substantial, deficiencies that impact the FAA's use and/or occupancy of the real property must be corrected by the Vendor before acceptance of the real property, related service, or utility service. The CO is responsible for documenting the substantial deficiencies, and for communicating them to the Vendor.
- d. *Punch List/Inspection.* Once the substantial deficiencies are resolved, the CO must amend the contract to reflect the contract's actual commencement date. Minor deficiencies, "punch list items," should not prevent acceptance of space and commencement of rent. The items must be documented, and communicated to the Vendor. The CO, or designated representative, must conduct a follow-up inspection to ensure that the minor deficiencies are corrected. The results of the follow-up inspection will be documented in the contract file.

D Clauses Revised 9/2020

[view contract clauses](#)

E Forms Revised 9/2020

[view procurement forms](#)

F Appendices Revised 9/2020

1 Appendix – Reserved Revised 7/2014

2 Appendix – Reserved Revised 7/2014

3 Appendix - When Should a COR be Appointed Revised 9/2020

When Should a COR be Appointed?

Usually Necessary:

- ☐ Contracts for supplies, services or construction with technical complexity, such as:
 - o Major systems
 - o Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
 - o Evolving technologies (e.g. NEXTGEN)
 - o Large scale construction (e.g. ATCT, ARTCC)
- ☐ Contracts with a long performance time, such as:
 - o Janitorial
- ☐ Items, services or construction requiring extensive oversight and inspection, such as:
 - o Guard services
- ☐ Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- ☐ Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- ☐ High-visibility contracts
- ☐ Contracts with numerous contractor personnel, especially when performing at an FAA site
- ☐ Contracts requiring delivery/monitoring of extensive Government furnished property
- ☐ Contracts for real property requiring extensive oversight and inspection

Usually Not Necessary:

- ☐ Contracts delivering commercial fixed-price items or services, such as:
 - o Spare parts
 - o Office equipment and maintenance
 - o Tree trimming/small landscaping projects
 - o Other items of a low complexity
- ☐ Commercial services with a short performance time, such as:
 - o Copier repair
 - o Elevator repair
 - o Small scale moving services
- ☐ Purchase orders with simple terms and conditions that require minimal oversight and inspection
- ☐ Short-term contracts to address requirements for a bona-fide emergency
- ☐ Renting Portable Storage Units or Procuring Short-term Storage Services

4 Appendix - Stop-Work Order Revised 4/2011

STOP-WORK ORDER

Pending a decision from the FAA, you are hereby instructed to stop all work immediately and to make no further commitments under contract [*insert number*] pursuant to clause 3.10.1-9 titled "Stop-Work Order." Under the requirements of this clause, please take steps necessary to minimize the incurrence of costs allocable to the period of work stoppage and advise all subcontractors and vendors to do the same. This stop-work order is in effect for 90* days from the date you receive this letter.

**A longer period may be indicated based upon mutual agreement of the parties.*

5 Appendix - Novation Agreement Revised 4/2011

NOVATION AGREEMENT

The [*insert name of transferor*] (Transferor), a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; the [*insert name of transferee*] (Transferee), [*if appropriate add "formerly known as the [insert former name]"*] a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; and the United States of America (Government) enter into this Agreement as of [*insert the date transfer of assets became effective*] under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the [*insert name(s) of agency(ies)*] [*insert name(s) of agency(ies)*], has entered into certain contracts with the Transferor, namely: [*insert contract or purchase order identifications or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."*] The term "the contracts," as used in this Agreement, means the above contracts and

purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of [*insert date*], the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a [*insert term descriptive of the legal transaction involved between the Transferor and the Transferee.*]

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government.

(When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below.)

(8) A certificate dated [insert date], signed by the Secretary of State of [insert name of State], to the effect that the corporate name of EFG Corporation [insert name of transferor] was changed to XYZ Corporation [insert name of transferee] on [insert date], has been filed with the Government.

(b) In Consideration of these facts, the Parties agree that by this agreement

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related

increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee--

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA ,

By _____

Title _____

[insert name of company],

By _____

Title _____

(CORPORATE SEAL)

[insert name of company],

By _____

Title _____

CORPORATE SEAL CERTIFICATE

I, [insert name of secretary], certify that I am the Secretary of ABC Corporation, that [insert name], who signed this Agreement for this corporation, was then [insert information] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this day of _____ 19 _____. By

(CORPORATE SEAL)

CERTIFICATE

I, [insert name], certify that I am the Secretary of [insert name of company], that [insert name], who signed this Agreement for this corporation, was then [insert information] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 19____.

By _____

CORPORATE SEAL

6 Appendix - Change of Name Agreement Revised 4/2011

CHANGE OF NAME AGREEMENT

The [insert new name of company] (Contractor), a corporation duly organized and existing under the laws of [insert State], and the United States of America (Government), enter into this Agreement as of [insert date] when the change of name became effective under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the [insert name(s) of agency(ies)], has entered into certain contracts and purchase orders with [insert original name of company], namely [insert contract or purchase order identifications; or delete "namely" and insert "as shown in the attached list marked "Exhibit A"] and incorporated in this Agreement by reference." The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) [Insert former name of company], by an amendment to its certificate of incorporation, dated [insert date], has changed its corporate name to [insert new name of company].

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) In consideration of these facts, the parties agree that--

(1) The contracts covered by this Agreement are amended by substituting the name [insert new name of company] for the name [*insert original name of company*] wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

United States of America ,

By _____

Title _____

[*Insert new name of company*]

By _____

Title _____

Corporate Seal

Certificate

I, [*insert name*] , certify that I am the Secretary of [*insert new name of company*]; that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this [*insert number*] day of [*insert month*] 19[*insert year*].

By _____

Corporate Seal

7 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 9/2020

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and

tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

1. Establishing Contract Administration Files (or Basic Contract Files).

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s) in the order listed in the "Contract Organization and File Content List" (see Procurement Forms in FAST) and separated by marked tabs or in separate folders. The "Contract Organization and File Content List" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. Basic Contract Documents. A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award form.
4. Copies of COR Delegation Form, QRO, Property Administrator, and Contract Administrator Designation memoranda.
5. Any other applicable documents listed in the Contract Organization and File Content List.

b. Contract Data Requirements List (CDRL) Folder. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. Voucher/Invoice Folder. Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. Working Copy of the Contract. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. Other Contract Folders. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;
5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and
9. Modifications.

2. Processing Vouchers/Invoices.

a. Financial Spreadsheet. A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. Processing Vouchers/Invoices.

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in Procurement System, noting date sent to COR/designee;
4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification; note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;
5. Upon confirmation of acceptance in Procurement System by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

3. Correspondence

a. Processing Incoming Correspondence.

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.
2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

b. Processing Outgoing Correspondence.

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

4. Processing Modifications to the Basic Contract

a. Preparing the Modification.

Each modification should include an SF-30 or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.

5. Contract change pages (with changes highlighted) for the working copy of the contract.
The modification number should be printed in the top left corner of each modified page.

b. *Distributing the Modification.* Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. *Filing the Modification.* The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents listed in the "Contract Organization and File Content List-Modifications" checklist.

d. *Other Actions Related to Modifications:*

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and
2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

5. Preparing Memoranda to the File.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

6. Maintaining the Subcontract File.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan (January 2010).

7. Processing CDRLs

a. Submission and Review of CDRLs. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. Processing Comments and Changes to and Approving CDRLs. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.

8 Appendix - Contract File Completion Statement Revised 4/2011

CONTRACT FILE COMPLETION STATEMENT

Contract Administration Office (If different from the Contracting Office):

Name: _____

Address: _____

Contracting Office Name: _____

Address: _____

Contract No. _____

Last Modification No. _____

Last Call or Order No. _____

Contractor's Name: _____

Address: _____

Dollar Amount of Excess Funds (if any): _____

Voucher Number and Date, if Final Payment has been made:

Voucher No.: _____ Date: _____

Invoice No. and date, if final approved invoice forwarded to disbursing office or other agency/activity

Voucher No.: _____ Date: _____

9 Appendix – Reserved Revised 7/2014

10 Appendix - Common Authorities for Modifications for Supplies, Services, or Construction Revised ~~9/2020~~ 10/2020

As described in AMS Procurement Guidance T3.10.1, contract terms may be modified by the Contracting Officer (CO) when in the best interest of FAA. Modifications can either be bilateral or unilateral:

1. Bilateral modification: a contract modification jointly agreed to by the CO and contractor.
2. Unilateral modification: a contract modification made by the CO that does not require concurrence by the contractor.

To issue a modification, the CO must have the authority to do so. The basis for the authority to modify a contract may be an AMS clause incorporated into a contract, a law or statute, or simply the terms and conditions of the contract.

The tables below provide varying actions that support a contract modification. The actions covered include change orders, administrative changes, supplemental agreements, and other actions that support a modification. Each table describes:

1. The type of action;

2. Whether it is a bilateral or unilateral modification; and

3. Reasons and authorities supporting a modification depending on the kind of requirement (i.e., supply, service, or construction) and type of contract (i.e., fixed-price or cost-reimbursement).

Each table also provides guidance into how each factor relates to Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract.

Table 1: Change Orders

Unilateral Modification (SF 30: Change Order (Block 13A), Unilateral (Block 13E))

Reasons for Modification	Authority
Supplies (Fixed-Price) Change to: <ul style="list-style-type: none"><input type="checkbox"/> Drawings, Designs, or Specifications<input type="checkbox"/> Method of Shipment or Packing<input type="checkbox"/> Place of Delivery	AMS Clause 3.10.1-12, Changes-Fixed-Price
Services (no supplies to be furnished) Change to: <ul style="list-style-type: none"><input type="checkbox"/> Description of Services<input type="checkbox"/> Time of Performance<input type="checkbox"/> Place of Performance	AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I
Services (supplies to be furnished) (Fixed-Price) Change to: <ul style="list-style-type: none"><input type="checkbox"/> Description of Services<input type="checkbox"/> Time of Performance<input type="checkbox"/> Place of Performance<input type="checkbox"/> Drawings, Designs, or Specifications<input type="checkbox"/> Method of Shipment or Packing<input type="checkbox"/> Place of Delivery	AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II
A&E or Other Professional Services (Fixed-Price) Change to:	AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III

<input type="checkbox"/> General scope	
Transportation Services (Fixed-Price) Change to: <ul style="list-style-type: none"> <input type="checkbox"/> Specifications <input type="checkbox"/> Work or services <input type="checkbox"/> Place of origin <input type="checkbox"/> Place of delivery <input type="checkbox"/> Tonnage to be shipped <input type="checkbox"/> Amount of Government-furnished property Place of delivery <ul style="list-style-type: none"> <input type="checkbox"/> Tonnage to be shipped <input type="checkbox"/> Amount of Government-furnished property 	AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV
R&D (Fixed-Price) Change to: <ul style="list-style-type: none"> <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Place of Inspection, Delivery, or Acceptance 	AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V
Supplies (Cost-Reimbursement) Change to: <ul style="list-style-type: none"> <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery 	AMS Clause 3.10.1-13, Changes- Cost-Reimbursement
Services (no supplies to be furnished) (Cost-Reimbursement) Change to: <ul style="list-style-type: none"> <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance 	AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I
Services (supplies to be furnished) (Cost-Reimbursement) Change to:	AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II

<input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	
Construction (Cost-Reimbursement) Change to: <input type="checkbox"/> Plans and Specifications or Instructions	AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III
Facilities (Cost-Reimbursement) Change to: <input type="checkbox"/> General Scope	AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV
R&D (Cost-Reimbursement) Change to: <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Place of Inspection, Delivery, or Acceptance	AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V
Time and Materials or Labor Hours Change to: <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery <input type="checkbox"/> Amount of Government Furnished Property	AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours
Construction, Dismantling, Demolition, or Removal of Improvements Change to: <input type="checkbox"/> Drawings, Designs, or	AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of Improvements

Specifications <input type="checkbox"/> Method or Manner of Performance <input type="checkbox"/> Government-Furnished Facilities, Equipment, Materials, Services, or	
Site <input type="checkbox"/> Accelerate the Performance of the Work	
Construction (Changed Conditions) Change to: <input type="checkbox"/> Drawings or Specification within the Scope of the Contract	AMS Clause 3.10.1-16, Changes and Changed Conditions

Table 2: Administrative Changes

Unilateral Modification (SF 30: Administrative Change (Block 13B), Unilateral (Block 13E))

Reasons for Modification	Authority
Accounting Code Change	AMS Procurement Guidance T3.10.1
COR Change	AMS Procurement Guidance T3.10.1
Change-of-Name Agreement	AMS Procurement Guidance T3.10.1

Table 3: Supplemental Agreements

Bilateral Modifications (SF 30: Supplemental Agreement (Block 13C), Bilateral (Block 13E))

Reasons for Modification	Authority
Negotiated Price or Other Adjustment Resulting from Changes Clause (Increase or Decrease)	Reference Applicable Changes Clause
Change in Term or Conditions or Order	Reference Applicable Changes Clause
Adjustments to Wage Determinations and collective bargaining agreements	AMS Clause 3.6.2-30, Fair Labor Standards Act and Service Contract Act <u>Labor Standards</u> --Price Adjustment (Multiple Year and Option Contracts)
Novation Agreement and Change-of-Name	AMS Procurement Guidance T3.10.1 & AMS Clause 3.10.1-25, Novation and Change-of-Name Agreements
Settlement of Agreement Under the Disputes Clause	AMS Clause 3.9.1-1, Contract Disputes

Assignment of Claims	AMS Clause 3.3.1-15, Assignment of Claims
Extension of Delivery Date of Performance Period	Reference Applicable Changes Clause

Table 4: Other

Unilateral Modifications (SF 30: Other (Block 13D), Unilateral (Block 13E))

Reasons for Modification	Authority
Option for Increased Quantity (Specific Line Item)	AMS Clause 3.2.4-32, Option for Increased Quantity
Option for Increased Quantity (Separately Priced Line Item)	AMS Clause 3.2.4-33, Option for Increased Quantity- Separately Priced Line Item
Option to Extend Services	AMS Clause 3.2.4-34, Option to Extend Services
Option to Extend the Term of the Contract	AMS Clause 3.2.4-35, Option to Extend the Term of the Contract
Termination for Convenience of the Government (Fixed-Price)	AMS Clause 3.10.6-1, Termination for Convenience of the Government (Fixed-Price)
Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)	AMS Clause 3.10.6-2, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)
Termination (Cost-Reimbursement)	AMS Clause 3.10.6-3, Termination (Cost-Reimbursement)
Termination (Cost-Reimbursement) (Construction)	AMS Clause 3.10.6-3/alt1, Termination (Cost-Reimbursement) Alternate I
Termination (Cost-Reimbursement) (Contracts with Agencies of the Federal Government, or state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt2, Termination (Cost-Reimbursement) Alternate II
Termination (Cost-Reimbursement) (Construction with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt3, Termination (Cost-Reimbursement) Alternate III
Termination (Cost-Reimbursement) (T&M and LH)	AMS Clause 3.10.6-3/alt4, Termination (Cost-Reimbursement) Alternate IV
Termination (Cost-Reimbursement) (T&M and LH with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt5, Termination (Cost-Reimbursement) Alternate V
Default (Fixed-Price Supply and Service)	AMS Clause 3.10.6-4, Default (Fixed-Price Supply and Service)

Default (Fixed-Price R&D)	AMS Clause 3.10.6-5, Default (Fixed-Price Research and Development)
Default (Fixed-Price Construction)	AMS Clause 3.10.6-6, Default (Fixed Price Construction)
Availability of Funds	AMS Clause 3.3.1-10, Availability of Funds
Availability of Funds for the Next Fiscal Year	AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year
Excusable Delays	AMS Clause 3.10.6-7, Excusable Delays
Government Delay of Work	AMS Clause 3.10.1-11, Government Delay of Work
Government Property	AMS Clause 3.10.3-2, Government Property - Basic Clause
Government Property (Fixed-Price)	AMS Clause 3.10.3-2/alt1, Government Property - Basic Clause Alternate I
Government Property (T&M/LH or Cost Reimbursement)	AMS Clause 3.10.3-2/alt2, Government Property - Basic Clause Alternate II
Government Property Consolidated Facilities	AMS Clause 3.10.3-3, Government Property Consolidated Facilities
Government Property (Facilities Acquisition)	AMS Clause 3.10.3-6, Government Property (Facilities Acquisition)
Government Property (Facilities Use)	AMS Clause 3.10.3-7, Government Property - Facilities Use
Government Property (Facilities Use) (Research)	AMS Clause 3.10.3-7/alt1, Government Property (Facilities Use). Alternate I
Suspension of Work	AMS Clause 3.10.1-8, Suspension of Work
Disputes (Continued Performance)	AMS Clause 3.9.1-1, Contract Disputes
Variation in Quantity (Fixed-Price contracts for supplies and services that involve the furnishing of supplies)	AMS Clause 3.2.2.8-2, Variation in Quantity
Variation in Estimated Quantities (Fixed-Price Construction)	AMS Clause 3.2.2.8-4, Variation in Estimated Quantities

Table 5: Other

Bilateral Modifications (SF 30: Other (Block 13D), Bilateral (Block 13E))

Reasons for Modification	Authority
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Addition of new work using a single source procurement (out of scope changes, additional quantities, time extensions that constitute new work, etc.)	AMS Policy 3.2.2.4
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11 FAA CPARS Guide Revised 10/2017

FAA Use of Contractor Performance Assessment Reporting System (CPARS)

1.0 Introduction

This Guide assigns responsibilities and provides procedures for systematically assessing contractor performance in accordance with AMS Procurement Guidance T3.10.1A16.

1.1 Background

The Contractor Performance Assessment Reporting System (CPARS) is a paperless contracting initiative housed and maintained by the DoD. Since the National Institutes of Health (NIH) discontinued use of its Contractor Performance System (CPS), CPARS has been mandated for use across all Federal Government agencies as the “feeder” system for entering contract performance data into the Government-wide Past Performance Information Retrieval System (PPIRS). Use of the CPARS is strongly encouraged, as it ensures that the FAA’s contract performance evaluations will be entered into the PPIRS database to enhance the centralized data repository of contractor performance information. All CPARS evaluations must be initiated and completed electronically within the system. This Guide refers only to the CPARS module under which performance evaluations for most CPARS evaluations will be done. Any performance evaluations for architect-engineer or construction contracts will be done under the separate ACASS and CCASS modules respectively. Information on all modules is available on the CPARS website.

1.2 Purpose

The primary purpose of the CPARS is to ensure current and accurate data on contractor past performance is available for use in source selections. The completed past performance assessments are available through PPIRS. In addition to the sources of information outlined in AMS Procurement Guidance T3.2.2A.3, the Contracting Officer may use information available through PPIRS to support responsibility determinations of prospective contractors. Senior FAA and contractor officials may also use the information derived from the CPARS for other management purposes consistent with AMS Guidance.

CPARS assesses a contractor’s performance, both positively and negatively as appropriate, providing a record on a given contract during a specified period of time. Each assessment must be based on objective data (or measurable, subjective data when objective data is not available) supportable by program and contract management data (see Section 1.4). CPARS performance expectations should be addressed in the Government and contractor’s initial post-award meeting.

1.3 Responsibility for Completing CPARS Assessments

Responsibility for completing quality CPARS assessments in a timely manner rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR shall be responsible for entering the ratings and narratives for each evaluation performed.

The CPARS process is designed with checks-and-balances to facilitate the objective and consistent evaluation of contractor's performance. Both the Government's and contractor's perspectives are captured in the CPARS evaluation.

1.4 CPAR Evaluation Methodology

The value of the CPARS to a future source selection team is dependent on the level of effort the AO takes in preparing a quality and timely narrative to accompany the CPAR's ratings. It is paramount the AO submits a rating consistent with the definitions of each rating and thoroughly describes the circumstances supporting the rating. The definitions of each rating, together with related guidance for preparing the narrative, are provided in Attachment 1.

Each evaluation must be based on objective data (or subjective data when objective data is not available) supported by program and contract management records. The following sources of data are recommended:

- ☐ Contractor operations reviews
- ☐ Status and progress reviews
- ☐ Production and management reviews
- ☐ Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- ☐ Cost performance reports and other cost and schedule metrics
- ☐ Other program measures and metrics such as:
 - o Measures of progress and status of critical resources
 - o Measures of product size and stability
 - o Measures of product quality and process performance
 - o Customer feedback/comments and satisfaction ratings
- ☐ Systems engineering and other technical progress reviews
- ☐ Technical interchange meetings
- ☐ Physical and functional configuration audits
- ☐ Quality reviews and quality assurance evaluations
- ☐ Subcontracting reports
- ☐ Earned contract incentives and award fee determinations

Subjective assessments concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture is prohibited.

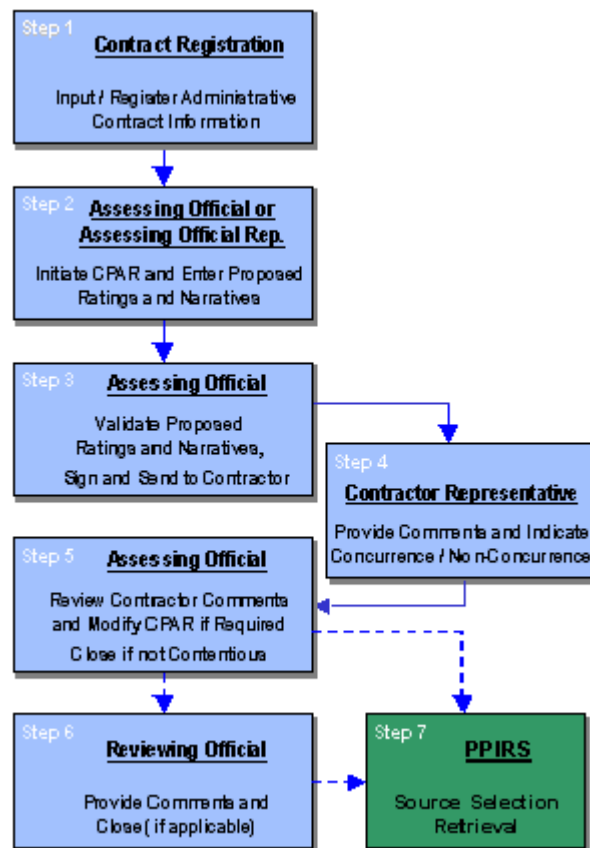
1.5 Uses of Summary CPAR Data

Summary data from the CPARS database or from the reports themselves may be used to measure the status of industry performance and support continuous process improvement. Further analysis of data from the CPARS database may be accomplished by the CPARS Focal Point for internal Government use but is not authorized for release outside the Government.

1.6 Change-of-Name/Novation

In the event of a contract novation or the change of the contractor's name, see AMS Procurement Guidance T3.10.1A.8 for guidance in these circumstances since the Dun & Bradstreet Universal Numbering System (DUNS), Commercial and Government Entity (CAGE) codes and contractor names may be affected in the CPARS. The AO of each contract affected by any such changes is ultimately responsible for ensuring that the contract information in the CPARS is current and correct.

1.7 Basic Workflow Diagram



2.0 Thresholds for Mandatory Evaluations

All contracts or orders which exceed the following thresholds must include the applicable contract clause addressing CPARS evaluations and have an evaluation completed in CPARS:

- ☐ Services contracts exceeding \$5,000,000;
- ☐ Supply contracts exceeding \$10,000,000;
- ☐ Construction contracts exceeding \$10,000,000
- ☐ Research and development contracts exceeding \$5,000,000

In addition to contracts that must have CPARS evaluations performed, FAA may choose to perform CPARS evaluations for contracts that do not meet the above thresholds.

2.1 CPARS for Indefinite-Delivery Contracts, Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs)

For indefinite-delivery contracts and BPAs, but excluding Basic Ordering Agreements, (BOAs) the dollar value of individual orders is combined to determine if the threshold to require completing CPARS evaluation(s) has been met.

The cognizant program office for the contract or agreement shall determine how CPARS evaluations' will be completed:

- ☐ One CPARS evaluation for each order,
- ☐ By combining all orders into one CPARS evaluation), or
- ☐ Combining similar orders together. For example, orders for one type of service are combined into one evaluation and orders for a different type of service are combined into separate evaluations.

Combining orders into one CPARS evaluation may not be feasible, when contracts are used by multiple activities within the agency, or when individual orders are significantly different. The cognizant program office should avoid combining into one CPARS evaluation multiple orders that are for different products or services or those that are different contract types.

When orders are combined, the narrative describing the contractor's performance on each order, both positive and negative, must be included so that the breadth and quality of information is available for source selection official use.

If a consolidated CPARS evaluation for orders is completed, the period of performance for the assessment is based on the effective date/award date of the basic contract and each subsequent, exercised option year period. Where possible, each order number and title may be included in Block 17. Narrative must be provided on the contractor's performance on each order (in Block 20) so that the breadth and quality of information on the order is available for source selection official use.

If separate CPARS for any single orders are completed, the period of performance for the assessments is based on the effective date/award date of each individual order.

For BOA orders, a CPARS evaluation must only be completed on each order meeting the threshold.

2.2 CPARS for Orders Under Federal Supply Schedules

For CPARS evaluations on Federal Supply Schedule Orders, the period of performance for the assessment must be based on the effective date/award date of the individual order.

2.3 Joint Ventures

When the joint venture on a contract using CPARS has a unique CAGE code and DUNS number, a single CPAR will be prepared for the joint venture using those CAGE and DUNS codes. If the joint venture does not have a unique CAGE code and DUNS code, separate CPARS containing identical narratives will be prepared for each participating contractor and will reference that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

2.4 Letter or Ceiling Priced Contracts

Assessment information regarding performance under letter or ceiling priced contracts using CPARS must be included in the annual evaluation. If the final negotiated contract type is not a cost-type contract, cost information for the period such an action was in effect (if applicable) must be included under the Cost rating element in the CPARS. If the final negotiated contract type is a cost-type, cost information for the entire period of performance must be included under the Cost rating element. The supporting narrative must fully explain the contractor's performance during the action, including throughout definitization. The contractor's performance under the undefinitized period must be separately identified but considered in the overall CPARS.

2.5 Subcontractor Assessments

Assessments shall not be completed on subcontractor performance. However, an assessment shall address the prime contractor's ability to manage and coordinate subcontractor efforts, if applicable, as well as compliance with requirements of the Small Business Subcontracting Program.

3.0 FAA Responsibilities

The FAA will:

- ☐ Establish procedures to implement CPARS. These procedures shall include training requirements for Focal Points, AOs, ROs, and Contractor Representatives to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports) and overall CPARS system administration are in place.
- ☐ Establish CPARS Focal Point(s)

- ☐ Register new contracts using CPARS in the system within 30 calendar days after contract award with the information for blocks 1-14 of the CPARS form. Registering the contract will establish the record and facilitate subsequent CPARS reporting.

3.1 CPARS Roles and Responsibilities

3.1.1 Agency Point of Contact (DOT Office of the Senior Procurement Executive (M-60))

The Agency Point of Contact is DOT, which responsible for administrative oversight of the CPARS process. Duties include:

- ☐ Obtaining Command Point of Contact access to CPARS
- ☐ Assigning of Senior Command Official(s)
- ☐ Serving on CPARS Operational Requirements Committee
- ☐ Monitoring to ensure effective implementation of the CPARS process

3.1.2 Senior Command Official (FAA Acquisition Policy Group (AAP-100))

- ☐ Obtaining Senior Command Official access to CPARS by contacting the Agency Point of Contact
- ☐ Coordination and submittal of subordinate organization CPARS Focal Points to the CPARS Program Office
- ☐ Assistance to subordinate organization CPARS Focal Points (e.g., training, monitoring, and policy)
- ☐ Evaluating quality and compliance metrics of subordinate organizations
- ☐ Providing metrics for management, as requested
- ☐ Reviewing and providing subordinate organization issues to the CPARS Focal Point and/or the CPARS Program Office

3.1.3 Focal Point (FAA Procurement and Information Services Team (AAP-120))

- ☐ Registering contracts using CPARS in the system within 30 calendar days of contract award
- ☐ Training in their prospective agency
- ☐ Assigning access authorization for FAA and contractor personnel (complete contract authorization based on information from the Contracting Officer, COR/Project Officer, and contractor personnel authorized to appoint a designated representative)
- ☐ CPARS account management and maintenance
- ☐ Control and monitoring of CPARS, including the status of overdue evaluations
- ☐ Establishing processes to monitor quality reports in a timely manner
- ☐ Troubleshoot user errors-if cannot be mitigated, contact the CPARS Help Desk

3.1.4 Assessing Official (AO) (FAA COR, Program/Project Manager, or Program Office Representative)

- ☐ Responsible for completing the CPARS

- ☐ Reviewing comments from the designated contractor representative once the evaluation has been returned by the contractor or after 30 days have lapsed
- ☐ After receiving and reviewing the contractor's comments on the CPAR, the AO may revise the assessment, including the narrative. The AO will notify the contractor of any revisions made to a report as a result of the contractor's comments. Such a revised report will not be sent to the contractor for further comment. The contractor will have access to both the original and final reports in CPARS when the FAA finalizes the evaluation.

3.1.5 Contractor Representative

The contractor on a given contract must designate two representatives to whom the evaluations shall be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative must be provided to the Contracting Officer who will, in turn, provide that information to the CPARS Focal Point for authorization access. Any changes in designated contractor personnel will be the sole responsibility of the contractor to inform the Contracting Officer or Contract Specialist who shall in turn forward the information to the CPARS Focal Point. The designated contractor representative has the authority to:

- ☐ Receive the Government evaluation from the AO
- ☐ Review, comment and return the evaluation within 60 calendar days. If the contractor desires a meeting or teleconference with the AO to discuss the CPAR, it must be requested, in writing, no later than seven calendar days from the receipt of the CPAR. The meeting or teleconference shall be held during the contractor's 60-day review period.

3.1.6 Reviewing Official (RO) (FAA Contracting Officer)

The Reviewing Official is the final arbiter when there is disagreement between the government and the contractor. The RO must review and sign the assessment when the contractor indicates non-concurrence with the CPARS or when the contractor is non-responsive. The RO has the authority to:

- ☐ Provide narrative comment (the Reviewing Official's comments supplement those provided by the AO. They do not replace the ratings provided by the AO).
- ☐ Sign the CPARS (at this point it is considered final and is posted in the CPARS and is available for Source Selection Official use in the PPIRS)
- ☐ Ensuring a copy of the completed evaluation is placed in the contract file

4.0 Frequency of Reporting

Generally, reporting is done on an annual basis. When an out-of-cycle CPARS is required, however, it is acceptable to complete two CPARS in a given year for the contract. Out-of-cycle CPARS do not alter the annual reporting requirement. For example, if the regular CPARS period of performance ends on 30 September 2012 and an out-of-cycle CPARS is completed which covers a performance period that ends on 1 May 2012, the next intermediate CPARS report is still required to cover the period of performance from 1 October 2011 to 30 September 2012. A period of performance overlap is only permitted when an out-of-cycle CPARS report has been prepared.

4.1 Initial Reports

An initial CPARS is required for new contracts using CPARS that have a period of performance greater than 365 calendar days. The initial CPARS must reflect evaluation of at least the first 180 calendar days of performance under the contract, and may include up to the first 365 calendar days of performance. For contracts with a period of performance of less than 365 calendar days, see “Final Reports” below.

4.2 Intermediate Reports

Intermediate CPARS are required every 12 months throughout the entire period of performance of the contract after the initial report and up to the final report. An intermediate CPARS is also required:

- ☐ Upon a significant change in the quality of contractor performance, or
- ☐ Upon a significant change within the agency, provided that a minimum of six months of performance has occurred, such a change in program management responsibility:

An intermediate CPARS must be done prior to any transfer of Assessing Official duties from one individual to another to ensure continuity.

An intermediate CPARS is limited to contractor performance occurring after the preceding normal cycle CPARS. To improve efficiency in preparing the CPARS, the CPARS may be completed together with other reviews (e.g., award fee determinations, major program events, program milestones and quality assurance surveillance records).

4.3 Final Report

A final CPARS must be completed upon contract completion or delivery of the final major end item on contract. Final Reports are to be prepared on all contracts using CPARS with a period of performance of less than 365 calendar days. The final CPARS does not include cumulative information but is limited to the period of contractor performance occurring after the preceding CPARS. The CPARS Focal Point has the authority to approve extensions when special circumstances arise.

4.4 Out-of-Cycle Reports

An Out-of-Cycle CPARS may be appropriate when there is a significant change in performance that alters the assessment in one or more evaluation area(s). The contractor may request a new assessment or the AO may unilaterally prepare a new evaluation and process a new CPARS through the automated CPARS system. The determination as to whether or not to update an evaluation will be made solely by the AO. The evaluation will follow the same workflow as the annual evaluations and will be posted electronically in CPARS and PPIRS after review/coordination through the FAA and contractor.

4.5 Addendum Reports

Addendum reports may be prepared, after the final past performance evaluation, to record the contractor's performance relative to contract closeout, warranty performance and other administrative requirements.

5.0 Records Retention and Disposition

All records created under this document must be retained and disposed of in accordance with agency procedures and any applicable program security requirements.

5.1 CPARS Markings and Protection

Anyone granted access to CPARS is responsible for ensuring that all CPARS are appropriately marked and handled. All CPARS forms, attachments, and working papers must be marked "FOR OFFICIAL USE ONLY/SOURCE SELECTION INFORMATION". Caution must be exercised in transmitting any CPARS as an attachment to an email message.

CPARS may also contain information that is proprietary to the contractor. Information contained on the CPARS, such as trade secrets, protected commercial information, or financial data obtained from the contractor in confidence, must be protected from unauthorized disclosure. AOs and ROs must annotate on the CPARS if it contains material that is a trade secret, etc., to ensure that future readers of the evaluations in the PPIRS are informed and will protect as required. The following guidance applies to protection both internal and external to the FAA.

5.1.1 Internal FAA Protection

CPARS must be treated as source selection information at all times. Information contained in the CPARS must be protected in the same manner as information contained in source selection files.

5.1.2 External Government Protection

Due to the sensitive nature of CPARS, disclosure of CPARS data to contractors other than the contractor that is the subject of the report, or other entities outside the FAA, is not authorized. Disclosure of CPARS data to advisory and assistance support contractors other than the contractor that is the subject of the report is strictly prohibited. A contractor will be granted access to its CPARS maintained in CPARS by the appropriate Focal Point.

5.2 Freedom of Information Act (FOIA)

Contractor performance information is privileged source selection information. It is also protected by the Privacy Act and is not releasable under the Freedom of Information Act. Performance assessments may be withheld from public disclosure under Exemption 5 of the Freedom of Information Act. The FOIA office must coordinate the request with the CPARS PMO and local FAA Focal Point.

5.3 Use of CPARS in Source Selection

CPARS provides an assessment of ongoing performance of contractors. Each report consists of a narrative evaluation by the AO, the contractor's comments, if any, relative to the assessment and the

RO's acknowledged consideration and reconciliation of significant discrepancies between the AO's evaluation and the contractor's comments. Source selection officials retrieve CPARS by using the PPIRS.

5.4 CPARS Format

For information on the CPARS format see Attachments 2, 3, or the [CPARS website](#).

Attachment 1

Evaluation Rating Definitions (Excluding Utilization of Small Business)		
Rating	Definition	Note
Dark Blue/Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there must have been NO significant weaknesses identified.
Purple/Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There must have been no significant weaknesses identified.
Green/Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor recovered from without impact to the contract. There must have been NO significant weaknesses identified. Contractors will not be assessed a rating lower than

		Satisfactory solely for not performing beyond the requirements of the contract.
Yellow/Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub- element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating must be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
Red/Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub- element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) must be used if the ratings are not going to be applied to a particular area for evaluation.

Evaluation Ratings Definitions (Utilization of Small Business)		
Rating	Definition	Note

Dark Blue/Exceptional	Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with AMS, 3.6.1-3 Utilization of Small, Small Disadvantaged and Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns (February 2009). Exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there must have been no significant weaknesses identified.
Purple/Very Good	Met all of the negotiated subcontracting goals in the traditional socio- economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (SDVOSB) for the	To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative

	<p>current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, VOSB, and SDVOSB. Complied with AMS, 3.6.1-3. Met or exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	<p>work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There must be no significant weaknesses identified.</p>
Green/Satisfactory	<p>Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with AMS, 3.6.1-3. Met any other small business participation requirements included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	<p>To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor has addressed or taken corrective action. There must have been no significant weaknesses identified.</p>
Yellow/Marginal	<p>Deficient in meeting key subcontracting plan elements. Deficient in complying with AMS, 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual</p>	<p>To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating must be supported by referencing the actions taken</p>

	Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	by the government that notified the contractor of the contractual deficiency.
Red/Unsatisfactory	Noncompliant with AMS 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the Contracting Officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required and any other applicable clauses.

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: Zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio-economic category where the goal negotiated in the plan was zero.

Attachment 2 Instructions for Completing a Systems CPARS Evaluation

A2.1 The Systems Business Sub-Sectors (not all of which are applicable to FAA procurements) are Aircraft, Shipbuilding, Space, Ordnance, Ground Vehicles, Training Systems, or Other Systems.

A2.2 **Block 1 Name/Address of Contractor.** State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) Code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A2.3 **Block 2 Type Report.** Indicate whether the CPARS is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A2.4 **Block 3 Period of Performance Being Assessed.** State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A2.4.1 **Period of Performance for Delayed Starts, Protests or Phase In Periods.** In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPARS Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPARS has been processed.

A2.4.2 **Period of Performance for Intermediate/Final Reports.** CPARS assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPARS Focal Point.

A2.4.3 **Period of Performance for Out-of-Cycle Reports.** Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to CPARS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of-Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPARS will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A.2.3.5 Block 4a Contract Number. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order/call number field should be used to reflect the contract/schedule/agreement number for the order/call.

A2.6 Block 4b Business Sector and Sub Sector. Select Services/IT/Operations

A2.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A2.8 Block 6 Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name).

A2.9 Block 7a Contracting Officer. Self-explanatory.

A2.9.1 Block 7b Phone Number. Include commercial phone number in the following format: (XXX) XXX-XXXX

A2.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A2.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar only if that date is later than Block 8a, Contract Award Date.

A2.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A2.12 Block 10 Contract Percent Complete/Delivery Order Status. State the current percent of the contract that is complete. If Cost Performance Reports (CPR) or Cost/Schedule Status Reports (C/SSR) data is available, calculate percent complete by dividing cumulative Budgeted Cost of Work Performed (BCWP) by Contract Budget Base (CBB) (less management reserve) and multiply by 100. CBB is the sum or negotiated cost plus estimated cost of authorized undefinitized work. If CPR or C/SSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100. In the event an Indefinite Delivery contract is utilized, estimate the percent complete.

A2.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order/call.

A2.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs/BPAs where orders/calls will be assessed individually, state the current obligated amount of the individual order/call, including modifications.

A2.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A2.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A2.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort

A2.18 Block 16 (Systems) Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify overall program phase and production lot (for example, concept development, engineering and manufacturing development, low-rate initial production, or full-rate production (Lot 1)), and any specific aspects of the phase of the acquisition being evaluated. Identify milestone phases, if applicable. Block 16 (Ship Repair and Overhaul) – Type of Availability. Not applicable to FAA contracts.

A2.19 Block 17 Contract Effort Description. This section is of critical importance to future source selection teams. The description should be detailed enough to assist a future source selection official in determining the relevance of this program to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a description of key milestone events that occurred in the review period may be beneficial (e.g., Critical Design Review (CDR), Functional Configuration Audit (FCA)), as well as major contract modifications during the period. Ensure all acronyms are identified.

Provide a complete description of the contract effort that identifies key technologies, components, subsystems, and requirements. For task/delivery/job order contracts, state the number of tasks issued during the period, tasks completed during the period, and tasks that remain active.

For contracts that include multiple functional disciplines or activities, separate them into categories to:

1. Reflect the full scope of the contract, and
2. Allow grouping of similar work efforts within the categories to avoid unnecessary segregation of essentially similar specialties or activities. Each category or area should be separately numbered, titled and described within Block 17 to facilitate cross- referencing with the evaluation of the contractor's performance within each category in Blocks 18 and 19.

A2.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR)/Summary Subcontracting Report (SSR)?

A2.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A2.21.1 Each area assessment must be based on objective data that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the AORs, AOs and other Government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, etc.

A2.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor meets an extremely tight schedule, a dark blue (exceptional) may be appropriate, or meeting a tight schedule with few delinquencies, a green (satisfactory) with a plus sign assessment may be given in recognition of the inherent schedule risk. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A2.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A2.21.4 Many of the evaluation areas in Block 18 represent groupings of diverse elements. The AO should consider each element and use the area rating to highlight significant issues. In addition, the AO should clearly focus on the contractor's "results" as they may be appropriate for the period being assessed in determining the overall area rating.

A2.21.5 Evaluate all areas which pertain to the contract under evaluation unless they are not applicable (N/A).

A2.21.6 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A2.21.7 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A2.21.8 Ratings will be in accordance with the definitions described in Attachment 2, "Evaluation Ratings Definitions."

A2.22 Block 18a Technical (Quality of Product). This element is comprised of an overall rating and six sub-elements. Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the AO's integrated evaluation as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. This assessment is not a roll-up of the sub-element assessments.

A2.22.1 Block 18a(1) Product Performance. Assess the achieved product performance relative to performance parameters required by the contract.

A2.22.2 Block 18a(2) Systems Engineering. Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

A2.22.2.1 Areas of focus should be: the planning and control of technical program tasks, the quality and adequacy of the engineering support provided throughout all phases of contract execution, the integration of the engineering specialties, management of interfaces, interoperability, and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives.

A2.22.2.2 System engineering activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. The assessment should cover these disciplines: systems architecture, design, manufacturing, integration and support, configuration control, documentation, test and evaluation.

A2.22.2.3 The assessment for test and evaluation should consider success/problems/failure in developing test and evaluation objectives; planning (ground/air/sea) test, simulations and/or demonstrations; in accomplishing those objectives and on the timeliness of coordination and feedback of the test results (simulations/demonstrations) into the design and/or manufacturing process.

A2.22.2.4 Other activities include production engineering, logistics support analysis, supportability considerations (maintenance personnel/skills availability or work hour constraints, operating, and cost constraints, allowable downtime, turnaround time to service/maintain the system, standardization requirements), survivability, human factors, reliability, quality, maintainability, availability, inspection, etc. Although some of these activities will be specifically addressed in other elements/sub-elements (such as product assurance), the focus of the assessment of systems engineering is on the integration of those specific disciplines/activities.

A2.22.2.5 The assessment of systems engineering needs to remain flexible to allow the evaluator to account for program-unique technical concerns and to allow for the changing systems engineering environment as a program moves through the program phases, e.g., Engineering and Manufacturing Development, Production.

A2.22.3 Block 18a(3) Software Engineering. Assess the contractor's success in meeting

contract requirements for all applicable software engineering based activities and processes.

A2.22.3.1 Software engineering activities include, as appropriate, software development (design, code, and unit test); application of reuse, COTS, and other non-developmental software components; integration (including software component integration, system integration and test, and acceptance test support); and sustainment. Software processes include, for example: software size, effort, and schedule estimation; requirements analysis, development, and management; software configuration management; software risk identification and management; metrics collection and analysis, technical reviews, decision analysis, and software quality assurance and control, each as they specifically address software engineering activities.

A2.22.3.2 Consider the contractor's success with respect to:

1. Planning a software development, integration, and testing effort that includes compatible cost, schedule, and performance baselines
2. Delivering expected software driven capabilities on cost and on schedule
3. Effective software metrics collection/analysis and status monitoring/reporting that provide the software visibility necessary to identify timely corrective actions and appropriately execute them
4. Staffing with the software knowledge, skills, and abilities needed to execute the contract across the lifecycle; timely assignment of the appropriate numbers of software staff
5. Awareness and control of software size and stability to enable tracking and allowing growth according to vetted enhancements vice scope creep
6. Effective testing and integration of developed software within the larger system test and evaluation effort
7. Effective processes to acquire, integrate, and test commercial off-the-shelf software and to achieve planned software reuse
8. Achieving software assurance
9. Consistent application of documented software engineering and management processes, including technical reviews, in alignment with contract requirements

A2.22.4 **Block 18a(4) Logistic Support/Sustainment.** Assess the success, as appropriate, of the contractor's performance in accomplishing logistics planning. For example, maintenance planning; manpower and personnel; supply support; support equipment; technical provisioning data; training and support; computer resources support; facilities; packaging, handling, storage and transportation; design interface; the contractor's performance of logistics support analysis activities and the contractor's ability to successfully support fielded equipment. When the contract requires technical and/or engineering data deliverables, the cognizant cataloging and/or standardization activity comments should be solicited.

A2.22.5 **Block 18a(5) Product Assurance.** Assess how successfully the contractor meets program quality objectives; e.g., production, reliability, maintainability, inspection, testability, and system safety, and controls the overall manufacturing process. The PM must be flexible in how contractor success is measured, e.g., data from design test/operational testing successes, field reliability and maintainability and failure reports, user comments and acceptance rates, improved subcontractor and vendor quality, and scrap and rework rates. These quantitative indicators may be useful later, for

example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall manufacturing process to include material control, shop floor planning and control, status and control, factory floor optimization, factory design, and factory performance.

A2.22.6 Block 18a(6) - Other Technical Performance. Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

A2.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc. Assess the contractor's adherence to the required delivery schedule by assessing the contractor's efforts during the assessment period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of contractor corrective actions.

A2.24 Block 18c Cost Control. (Not Applicable for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Is the contractor experiencing cost growth or underrun, discuss the causes and contractor-proposed solutions for the cost overruns. For contracts where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed.

A2.24.1 Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the Cost element. The contractor's performance under the UCA must be separately identified but considered in the overall annual ratings.

A2.25 Block 18d Management. This element is comprised of an overall rating and three sub-elements. Activity critical to successfully executing the contract must be assessed within one or more of the sub-elements. This overall rating at the element level is the AO's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a roll-up of the sub-element assessments.

A2.25.1 Block 18d(1) Management Responsiveness. Assess the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, Engineering Change Proposals (ECPs), or Letter or Ceiling Priced Contracts), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction. Consider the contractor's responsiveness to the program as it relates to meeting contract requirements during the period covered by the report.

A2.25.2 Block 18d(2) Subcontract Management. Assess the contractor's success with timely award and management of subcontracts. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team. Consider efforts taken to ensure early identification of subcontract problems and the timely application of

corporate resources to preclude subcontract problems from impacting overall prime contractor performance.

A2.25.3 Block 18d(3) Program Management and Other Management. Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract; identifies and applies resources required to meet schedule requirements; assigns responsibility for tasks/actions required by contract; communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify any other areas that are unique to the contract, or that cannot be captured elsewhere under the Management element.

A2.25.3.1 Integration and coordination of activities should reflect those required by the Integrated Master Plan/Schedule. Also consider the adequacy of the contractor's mechanisms for tracking contract compliance, recording changes to planning documentation and management of cost and schedule control system, and internal controls, as well as the contractor's performance relative to management of data collection, recording, and distribution as required by the contract.

A2.26 Block 18e Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Veteran Owned, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Minority Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A2.26.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Where applicable, assess compliance with Small Business Subcontracting Plan (Test Program)) including any program specific data required in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.26.2 It may be necessary to seek input from the Small Business specialist, ACO or PCO in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted. In cases where the contractor has a comprehensive subcontracting plan, request the DCMA Comprehensive Subcontracting Plan Manager to provide input including any program specific performance information.

A2.26.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "green" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan (see AMS 3.6.1-6). In such case, the Utilization of Small Business area must be rated "red".

A2.26.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A2.26.5 Ratings will be in accordance with definitions described in Attachment 1, "Evaluation Rating Definitions (Utilization of Small Business)."

A2.26.6 A contract may have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A2.27 **Block 18f Other Areas.** Specify additional evaluation areas that are unique to the contract or that cannot be captured elsewhere on the form. More than one type of entry may be included but should be separately labeled. If extra space is needed, use Block 20.

A2.27.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18f). The AO should translate the award fee earned to color ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A2.27.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type incentive contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18f).

A2.27.3 Use Block 18f in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form. As an example, this block may be used to address security issues, provide an assessment of provisioning line items or other areas as appropriate.

A2.28 **Block 19 Variance (Contract-to-Date).** If Cost Performance Report (CPR) or Cost/Schedule Status Review (C/SSR) data are available, identify the current percent cost variance to date, the Government's estimated completion cost variance (percent), and the cumulative schedule variance (percent). Indicate the cutoff date for the CPR or C/SSR used.

A2.28.1 Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, column 6 of the C/SSR) by the Budgeted Cost of Work Performed (BCWP) and multiply by 100.

A2.28.2 Compute completion cost variance percentage by dividing the Contract Budget Baseline (CBB) less the Government's Estimate At Completion (EAC) by CBB and multiplying by 100. The calculation is $[(CBB - EAC)/CBB] \times 100$. The CBB must be the current budget base against which the contractor is performing (including formally established Over Target Baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in Block 20 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost

performance in terms of the revised baseline and reference the CPAR that described the baseline adjustment. For example, "The contract baseline was formally adjusted on (date); see CPAR for (period covered by report) for an explanation."

A2.28.3 Compute cumulative schedule variance percentage by dividing the Budgeted Cost of Work Performed (BCWP) less budgeted cost of work scheduled (BCWS) by BCWS and multiply by 100. The calculation is $[(BCWP - BCWS)/BCWS] \times 100$. If the schedule variance exceeds 15 percent (positive or negative), briefly discuss in Block 20 the significance of this variance for the contract effort.

A2.29 Block 20 AO Narrative (see Paragraph 1.4). A factual narrative is required for all assessments regardless of color rating (e.g., even "green" or "satisfactory" ratings require narrative support). Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18 or 19. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations. The AO's comments in Block 20 may be up to 16,000 characters (approximately three pages) in CPARS.

A2.29.1 The AO must choose the applicable choice to the following statement after block 20: "Given what I know today about the contractor's ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice."

A2.30 Block 21 AO Signature. The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A2.31 Block 22 Contractor Comments. Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A2.32 Block 23 Contractor Representative Signature. The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A2.33 Block 24 RO Comments. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A2.34 Block 25 - RO Signature. The RO will enter his or her name, title, organization (AF users do not include a code), phone number in the following format: (XXX) XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 3 Instructions for Completing a Services, Information Technology, or Operations Support CPAR

A3.1 All business sectors, except Systems, and construction and architect-engineer, will be completed on this form.

A3.2 **Block 1 Name/Address of Contractor.** State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A3.3 **Block 2 Type Report.** Indicate whether the CPAR is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A3.4 **Block 3 Period of Performance Being Assessed.** State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A3.4.1 **Period of Performance for Delayed Starts, Protests or Phase-In Periods.** In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPAR Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPAR has been processed.

A3.4.2 **Period of Performance for Intermediate/Final Reports.** CPAR assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPAR Focal Point.

A3.4.3 **Period of Performance for Out-of-Cycle Reports.** Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to the CPARS AIS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of- Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPAR will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A3.5 **Block 4a Contract Number.** Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should

match the master contract number. The order number field should be used to reflect the contract/schedule/agreement number for the order/call.

A3.6 Block 4b Business Sector and Sub-Sector. Service/IT/Operations

A3.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A3.8 Block 6 - Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name) if performance is on a military installation.

A3.9 Block 7a Contracting Officer. Self-explanatory.

A3.9.1 Block 7b Phone Number. Include the commercial phone number in the following format: (XXX) XXX-XXXX

A3.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A3.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar date only if that date is later than Block 8a, Contract Award Date.

A3.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A3.12 Block 10 N/A. Not applicable.

A3.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order.

A3.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task/job order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs where orders will be assessed individually, state the current obligated amount of the individual order, including modifications.

A3.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A3.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A3.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort. If possible, include the amount of subcontract costs of the total contract effort. Discussion of the prime contractor's management of the subcontractor should be included in Block 18d-Business Relations.

A3.18 Block 16 Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify the type of services (for example, professional services, maintenance, installation or information technology services).

A3.19 Block 17 Contract Effort Description. Provide a description of the contract effort that identifies the key requirements and/or type of effort. This section is of critical importance to future source selection officials. The description should be detailed enough so that it can be used in determining the relevance of this program to future source selections. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. Ensure acronyms are identified. For task/delivery order contracts, state the number of orders issued during the period.

A3.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR) /Summary Subcontracting Report (SSR)

A3.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A3.21.1 Each area assessment must be supported by objective data (or subjective observations) that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the PM, Contracting Officer and other specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example include the Contracting Officer's Representative (COR) for the program and may also be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, data, etc.

A3.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A3.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A3.21.4 Evaluate all areas which pertain to the contract under evaluation, unless they are not applicable (“N/A”).

A3.21.5 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A3.21.6 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A3.21.7 Ratings will be in accordance with the definitions in Attachment 2.

A3.21.8. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than satisfactory solely for not performing beyond the requirements of the contract.

A3.22 Block 18a Quality of Product or Service. Assess the contractor’s conformance to contract requirements, specifications and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards). List and assess any sub-elements to indicate different efforts where appropriate. Include, as applicable, information on the following:

1. Are the reports data accurate?
2. Does the product or service provided meet the specifications of the contract?
3. Does the contractor’s work measure up to commonly accepted technical or professional standards?
4. What degree of FAA technical direction was required to solve problems that arise during performance?

For Operations Support: Assess how successfully the contractor meets program quality objectives such as production, reliability, maintainability and inspection. The AO must be flexible in how contractor success is measured; e.g., using data from field reliability and maintainability and failure reports, user comments and acceptance rates, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor’s control of the overall production process to include material control, shop planning and control, and providing status updates.

A3.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance).

This assessment of the contractor’s adherence to the required delivery schedule should include the contractor’s efforts during the assessment period that contributes to or affect the schedule variance. This element applies to contract closeout activities as well as contract performance. Instances of

adverse actions such as the assessment of liquidated damages or issuance of Cure Notices, Show Cause Notices, and any other notifications to the contractor of serious contract performance issues are indicators of problems which may have resulted in variance to the contract schedule and should, therefore, be noted in the evaluation.

A3.24 Block 18c Cost Control. (Not required for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Include, as applicable, the following information:

1. Does the contractor keep within the total estimated cost (what is the relationship of the negotiated costs and budgeted costs to actuals)?
2. Did the contractor do anything innovative that resulted in cost savings?
3. Were billings current, accurate and complete?
4. Are the contractor's budgetary internal controls adequate?

Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the cost element. The contractor's performance under the UCA will be separately identified but considered in the overall annual ratings.

A3.25 Block 18d Business Relations. Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior (to include timely identification of issues in controversy), customer satisfaction, timely award and management of subcontracts. Include, as applicable, information on the following:

1. Is the contractor oriented toward the customer?
2. Is interaction between the contractor and the government satisfactory or does it need improvement?
3. Include the adequacy of the contractor's accounting, billing, and estimating systems and the contractor's management of Government Property (GFP) if a substantial amount of GFP has been provided to the contractor under the contract.
4. Address the timeliness of awards to subcontractors and management of subcontractors, including subcontract costs. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.
5. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team.

A3.26 Block 18e Management of Key Personnel (For Services and Information Technology Business Sectors only - Not Applicable to Operations Support). Assess the contractor's performance in selecting, retaining, supporting, and replacing, when necessary, key personnel. For example:

1. How well did the contractor match the qualifications of the key position, as described in the contract, with the person who filled the key position?

2. Did the contractor support key personnel so they were able to work effectively?
3. If a key person did not perform well, what action was taken by the contractor to correct this?
4. If a replacement of a key person was necessary, did the replacement meet or exceed the qualifications of the position as described in the contract schedule?

A3.27 Block 18f Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Universities and Minority Educational Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A3.27.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Assess any small business participation goals which are stated separately in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.27.2 It may be necessary to seek input from the Small Business Office or Contracting Officer in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted.

A3.27.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "satisfactory" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan. In such case, the Utilization of Small Business area must be rated "unsatisfactory".

A3.27.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A3.27.5 Ratings will be in accordance with definitions described in Attachment 2, "Evaluation Ratings Definitions (Utilization of Small Business)."

A3.27.6 A contract must have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A3.28 Block 18g Other Areas. Specify additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on the form. More than one type of entry may be included, but should be separately labeled. If extra space is needed, use Block 20.

A3.28.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18g). The AO should translate the award fee earned to adjectival ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A3.28.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18g).

A3.28.3 Use Block 18g in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form.

A3.29 **Block 19 N/A.** Not applicable.

A3.30 **Block 20 Assessing Official Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of rating. Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal assessment could, for example, be supported by information concerning personnel changes or schedule delinquency rate. Key personnel familiar with the effort may have been replaced by less experienced personnel. Sources of the data used by the AO for the assessment may include customer/field surveys or evaluation of contractor reports. The Contracting Officer should be contacted to ensure that all applicable data has been incorporated. Block 20 comments may be up to 16,000 characters (approximately three pages) in CPARS.

A3.30.1 The AO must choose the applicable choice to the following statement after Block 20: "Given what I know today about the contractor's ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice."

A3.31 **Block 21 AO Signature.** The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A3.32 **Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A3.33 **Block 23 Contractor Representative Signature.** The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A3.34 Block 24 RO Comments. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A3.35 Block 25 - RO Signature. The RO will enter his or her name, title, organization, phone number in the following format: (XXX)XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 4 CPARS Website Features

Features of the CPARS website include:

1. The "production" CPAR system for actual entry of the performance evaluation data;
2. The "practice" CPAR system. The practice system is a mirror image of the functionality of the CPAR system using a separate database of simulated CPAR records. The practice system allows users to gain familiarity with the system without actually entering live performance evaluation data;
3. A "requirements" page that describes hardware and software required, security access levels, security features, how to obtain a user account and technical service support, and answers to frequently asked questions.
4. Instructions on Internet Explorer (IE) fixes that may be necessary for FAA access to CPARS;
5. A Quality Checklist that tutors users on completing a quality evaluation;
6. Link to reference material;
7. Link to CPARS Training;
8. Access Request forms;
9. Software Release history; and
10. Metrics (updated quarterly).